United Nations CED/C/SR.239

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
28 May 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 239th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 22 May 2018, at 3 p.m.

Chair: Ms. Janina

Contents

Consideration of reports of States parties to the Convention

Initial report of Honduras

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08257 (E) 250518 280518

1808257

Please recycle

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Honduras (CED/C/HND/1; CED/C/HND/Q/1 and CED/C/HND/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Honduras took places at the Committee table.*

2. **Ms. Cueva** (Honduras), introducing the initial report of Honduras (CED/C/HND/1), said that her delegation looked forward to engaging in a frank and open dialogue with the Committee in order to identify areas of progress and remaining challenges in her country's implementation of the Convention. In recent years Honduras had hosted visits by a number of United Nations special rapporteurs and other high-level representatives dealing with human rights issues and had cleared its backlog of reports due for submission to the treaty bodies. She wished to acknowledge the contribution of civil society to the preparation of the initial report at hand.

3. Measures to combat organized crime and drug trafficking in Honduras had halved homicide rates between 2011 and 2017. Those measures included sustained efforts by security institutions and structural reform of the justice sector. A number of human rights bodies had been established, including, most recently, the Ministry of Human Rights, Justice, Governance and Decentralization and the Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials. The latter office had an initial budget of some US$ 800,000 and its staff included five specialized investigators. Moreover, five additional investigators had been assigned to the Office of the Special Prosecutor for Human Rights.

4. On the legislative front, the 2012 amendment of the Criminal Code through the addition of article 333-A incorporated elements of articles 2, 5 and 7 of the Convention and provided for the prosecution of crimes relating to enforced disappearance. The National Congress was reviewing an array of draft legislation covering issues such as adoption, DNA identification, measures to trace women who had gone missing, and reparations; if passed, those texts would further strengthen the implementation of the Convention in Honduras.

5. The ranks of prosecutors in the Public Prosecution Service had more than doubled since 2013 and the Service's investigative capacity had been strengthened through the creation of specialized units. In particular, its Technical Criminal Investigation Agency, founded in 2014, now commanded a budget of US$ 6.4 million.

6. In order to ensure that allegations of enforced disappearance were investigated impartially and independently by the civilian authorities, the Constitution prohibited the use of military courts to try non-military offences. When a crime was believed to have been committed by police or military personnel, members of those forces were not allowed to participate in the investigation conducted by the Public Prosecution Service, and the suspects concerned could be removed from their functions to prevent any interference with the investigation.

7. The Public Prosecution Service was investigating 164 cases of alleged enforced disappearance, including some dating from before the Criminal Code had entered into force. The case of Juan Humberto Sánchez, which dated back more than 28 years, had been reopened; as a result, the victim had been identified, charges had been filed and oral proceedings would begin in August 2018. Investigations into the case of Donatilo Jiménez had revealed that the perpetrators had been members of an organized criminal group acting without any State involvement. In the case of Norma Yolanda Hernández López, a warrant had been issued for the arrest of a suspect, and its execution was pending. The case of Manuel de Jesús Bautista was still under investigation.

8. Regarding a claim in a shadow report that the annual reports of the Office of the National Commissioner for Human Rights did not provide information on the follow-up to reports of enforced disappearance, she said that that body had reported that, out of the 71

cases opened in 2015, 2016 and 2017 to investigate allegations of enforced disappearance, only one had been found to involve State agents.

9. Regarding paragraph 9 (b) of the list of issues (CED/C/HND/Q/1), which concerned requests for extradition in cases involving allegations of enforced disappearance, the Ministry of Foreign Affairs and International Cooperation had confirmed that it had no record of any such requests.

10. Regarding mechanisms for protecting human rights defenders, she said that the National Protection System currently protected more than 211 people, including 3 human rights defenders who worked with victims of enforced disappearance.

11. The National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had access to all places of detention and had in recent years made more than 400 visits, most of them unannounced, to such places. In 2017 it had provided relevant training to 657 public servants and persons deprived of liberty. In addition, the curricula for the training of members of the armed forces and the police now included training on human rights and on topics such as community policing and criminal investigation.

12. As for clandestine graves, 123 of the 1,403 exhumations carried out by the Forensic Medicine Department between 2004 and 2018 had corresponded to such graves. Since 2015 the Violent Death Unit of Bajo Aguán had carried out 81 exhumations, 31 of which had resulted in judicial proceedings.

13. To tackle the issue of the disappearance of Honduran migrants heading for the United States of America, her country had signed the Inter-Institutional Cooperation Agreement on the Establishment of Mechanisms for the Exchange of Information on Untraced Migrants and Unidentified Bodies. A total of 440 cases had been registered and the remains of 36 Hondurans had been identified. Under the Act on the Protection of Honduran Migrants and Members of Their Families, a fund had been established to assist migrants, including with the repatriation of the remains of Hondurans who had died abroad.

14. To protect children from trafficking and irregular adoption, DNA samples had been taken from 469 children in 2017. Legislation on the "AMBER Alert" system for tracing and protecting missing children provided for the transmission of public alerts in such cases and the establishment of a national coordinating committee.

15. **Mr. Huhle** (Country Rapporteur) said that, while enforced disappearances remained a major issue in Honduras, the State party was setting a good example for the region by allowing external scrutiny of its efforts to combat the problem. Regarding the indication, in the State party's replies to the list of issues (CED/C/HND/Q/1/Add.1), that making the declarations provided for in articles 31 and 32 of the Convention would lead to duplication of functions under different procedures, he said that it was important for victims to have more than one avenue for recourse.

16. He asked whether there had been any recent developments regarding the investigation and prosecution of persons and groups acting without State authorization and whether fresh statistics were available from the Office of the National Commissioner for Human Rights, which maintained a register of cases of enforced disappearance. What did the Office and other State institutions do with the information in the register? Did the registration of a new case ever result in an immediate search for the missing person? He would also welcome relevant statistics collected by other State entities, and would like to know whether there was a consolidated register and whether statistics from different entities underwent a comparative analysis. He also asked for information on the number and current status of any investigations conducted in response to reported cases of enforced disappearance.

17. The statement, in paragraph 9 of the replies to the list of issues, that only one case of enforced disappearance dated from before 2010 contrasted starkly with information from other sources. Given the prominent cases handled by the Inter-American Court of Human Rights in preceding decades, and the resulting rulings, he wondered whether that statement was accurate.

18. The information provided by the State party about various instruments, institutions and mechanisms for tracing migrants who had gone missing was inadequate. The State party was requested to provide comprehensive information on the functions and areas of competence of each entity and on how each was connected with the Honduran State. It should also provide a comprehensive overview of cooperation between Honduras and Mexico to locate missing persons and prosecute alleged perpetrators of enforced disappearance. Perhaps the Mexican institutions that had recently been established for those purposes could serve as models for Honduras to follow in setting up more effective bodies of its own.

19. He wished to know whether investigations had been conducted into the possibility that State agents had been involved in the ill-treatment or enforced disappearance of migrants. He was concerned about reports suggesting that the participation of certain branches of the security forces in investigations into alleged cases of enforced disappearance might amount to a violation of article 12 (4) of the Convention. In addition to the mechanisms that had been established for the purpose of finding the mortal remains of victims of enforced disappearance, he hoped the delegation could provide details about any mechanisms specifically intended to search for living persons.

20. **Ms. Galvis Patiño** (Country Rapporteur) said that she was pleased to learn that the new Criminal Code had been adopted. She wished to know whether the definition of enforced disappearance contained in article 333-A of the 2012 Code had been maintained unaltered in the new text. She understood that the phrase "thereby limiting or denying their recourse to the applicable constitutional and procedural guarantees", contained in that article, was to be interpreted as a consequence of the criminal act, and she would be interested to know whether and how that provision had been interpreted by the courts. Had civil society been consulted during the process of drafting the new Criminal Code and, if so, in what way?

21. She asked whether the provisions of the new Criminal Code addressing criminal acts carried out with the "authorization, support or acquiescence" of a public official adequately reflected the prerequisites defining the criminal responsibility of superiors contained in article 6 (1) (b) of the Convention. She would like to know whether concealment, which was apparently a separate offence under the Criminal Code, had ever come before the courts in a case of enforced disappearance. Could the delegation assure the Committee that provisions prohibiting the invocation of superior orders as a justification for enforced disappearance were consistent with article 6 (2) of the Convention?

22. The Committee would like to know whether the new Criminal Code provided for increased penalties for perpetrators of enforced disappearance and whether such penalties corresponded to those for the most serious offences. She had been happy to learn that the Code made allowance for the mitigating and aggravating circumstances stipulated under article 7 (2) of the Convention; however, she wished to know what guarantees were in place to ensure that the Public Prosecution Service's authority not to bring criminal proceedings against suspects who cooperated in an investigation did not become an obstacle to the prosecution of cases of enforced disappearance. She sought assurances from the delegation that the new Criminal Code duly categorized enforced disappearance as a continuous crime which, in accordance with articles 8 and 24 of the Convention, did not cease until the victim had been discovered, either alive or dead.

23. The State party had reported that it was in the process of investigating 164 cases of enforced disappearance; however, according to information available to the Committee, around 200 cases had been reported since the 1980s. She would be interested to hear how the delegation accounted for that disparity. What measures were taken to ensure that the retroactive application of the definition of enforced disappearance to acts that had occurred in the past was consistent with the continuous nature of the offence?

24. The Committee would be interested to learn more about a series of amnesties that had been declared since the late 1980s and, in particular, whether they had ever been applied to persons implicated in cases of enforced disappearance. She hoped the delegation could comment on reports that neither the Public Prosecution Service nor the Office of the National Commissioner for Human Rights dealt with cases of Honduran nationals who

went missing outside the country. The Committee shared the concerns expressed by the Inter-American Commission on Human Rights that the law regulating the activity of the military police did not sufficiently guarantee the independence and impartiality of prosecutors and judges who investigated alleged human rights violations committed by military police personnel. In that regard, she would be interested to know whether there were any plans to bring domestic law into line with article 11 of the Convention.

25. **Mr. Teraya** said that he too was concerned that the provision whereby the Public Prosecution Service could refrain from bringing criminal proceedings if a suspect cooperated with investigators could amount to a legal loophole, which perpetrators of enforced disappearance might exploit to escape punishment. In that regard, he would be interested to hear about any plea-bargaining arrangements that existed within the domestic legal system.

26. **Mr. Figallo Rivadeneyra** said that he shared the concern expressed by Ms. Galvis Patiño. The three prerequisites defining the criminal responsibility of superiors, which were very precisely detailed in article 6 (1) (b) of the Convention, did not seem to be adequately encompassed by the concept of "acquiescence" referred to in article 333-A of the Criminal Code. He would be interested to know whether the new Criminal Code explicitly defined enforced disappearance as a crime against humanity.

27. **Mr. Baati** said that the process of drafting the new Criminal Code seemed to have taken a very long time. He would appreciate it if the delegation could explain what difficulties had been encountered that could account for such a delay. Had those difficulties been related in any way to the Convention or to the definition of enforced disappearance as a crime against humanity?

The meeting was suspended at 3.55 p.m. and resumed at 4.25 p.m.

28. **Ms. Alvarado** (Honduras) said that the Public Prosecution Service remained committed to ensuring that no case of enforced disappearance went unpunished. Of the 164 cases of enforced disappearance currently being investigated by the authorities, 83 per cent of the victims were male and 17 per cent were female. The majority were Hondurans, but some of the victims were nationals of other Central and South American countries. In some cases, their identity was still unknown. The discrepancy between the figure of 164 and the 184 cases reported by the Office of the National Commissioner for Human Rights might be due to the fact that some cases had been registered not as enforced disappearance, but as other offences. Reports received by the National Commissioner for Human Rights were referred to the Office of the Special Prosecutor for Human Rights. With regard to the statement, in the written replies, that one case of disappearance dated from before 2010, she said that the case in question remained open because the authorities were conducting criminal proceedings in the interest of preventing impunity.

29. Although the courts had never had occasion to consider concealment in the context of a case of enforced disappearance, there was nothing to prevent them from doing so if, for example, it emerged that one State official was covering up for another. Cases in which agents of the State were accused of human rights abuses were handled by specialized prosecutors within the Public Prosecution Service. Such cases were conducted and investigated in the same way as other cases, and with the same guarantees of independence and impartiality. Suspects enjoyed no privileges on the grounds that they were State officials.

30. The legal definition of enforced disappearance as a continuous crime was in line with the Inter-American Convention on Forced Disappearance of Persons. Application of the provision whereby the penalty for enforced disappearance could be mitigated if the perpetrator cooperated with investigators would require the approval of the Attorney General. In any case, it had never been used in practice. All cases of enforced disappearance were investigated, irrespective of whether or not the alleged perpetrator was a State official. As soon as a person was reported missing, the same investigative protocols were followed, which included inquiries with the missing person's relatives, social media alerts and checks at border crossings.

31. The responsibility of superiors in cases of enforced disappearance was clearly defined in the current Criminal Code and in the amended version of the Code that had recently been adopted. Cases had in fact been brought against high-ranking police officials for orders they had issued to subordinates. There was no special protocol for cases of enforced disappearance, but a handbook had been developed detailing unified protocols to be followed by investigators — whether from the Public Prosecution Service, the Ministry of Security or the Technical Criminal Investigation Agency — in all cases, including those of enforced disappearance.

32. **Ms. Villanueva** (Honduras) said that before 2010, Honduras had lacked the mechanisms and technical means to search for missing persons, including migrants, in an orderly and systematic manner. Since then, however, the Government had partnered with other countries and international organizations with a view to tracing and repatriating Hondurans who had gone missing on the migration route to the United States. For example, it had been working with the Argentine Forensic Anthropology Team on a project to develop a forensic data bank — which already contained 440 genetic profiles, including those of 323 men, 100 women and 17 individuals whose sex was unknown — that was nearing completion. Cooperation had been established with the forensic institutions of the other Northern Triangle countries of Central America, while new technologies, such as equipment for the operation of the Automated Fingerprint Identification System (AFIS), had been donated by the United States. The Public Prosecution Service was seeking certification by the International Organization for Standardization as part of a drive to ensure that the forensic services of all Central American countries, Mexico and the United States observed the same quality standards. In 2015, the Forensic Medicine Department had embarked on a modernization process and now applied cutting-edge technologies in areas such as dactyloscopy, genetics, anthropology and odontology. Although in the past the authorities had not had the capacity to obtain genetic profiles from skeletal remains and had resorted to sending them abroad for analysis, the Government had now acquired DNA sequencers, leading to the successful identification of remains in the case of Juan Humberto Sánchez. The new technology also meant that remains stored by the Forensic Medicine Department could be compared with data provided by the families of missing persons.

33. All of the Central American countries worked with the International Committee of the Red Cross (ICRC), which had provided them with a database to promote the standardized application of universal forensic concepts. Furthermore, an interdisciplinary group comprising the families of missing persons, ICRC, ministries and the Forensic Medicine Department of the Public Prosecution Service had been set up to review missing persons cases in the context of migration and to share information with authorities in other countries. Part of its work was to determine whether the deaths of Honduran nationals along the migration route had been violent and required further investigation. The Government also chaired a council of Central American forensic institutions and maintained direct relations with the Government of the United States, the United States Border Patrol, the University of Texas and the University of Arizona. Its participation in regional partnerships was yielding positive outcomes in the search for missing persons.

34. **Ms. Cueva** (Honduras) said that in 2014, following the adoption of the Act on the Protection of Honduran Migrants and Members of Their Families, the Government had established a department for the protection of migrants within the Ministry of Foreign Affairs, as well as a National Council for the Protection of Honduran Migrants.

35. To enhance search efforts for Honduran nationals in Guatemala, Mexico and the United States, the Government had strengthened its consular network and had developed a mechanism consisting of actions to be carried out in coordination with other countries in the hours and days after a person was first reported missing. The Mexican Government had established a crime investigation unit for migrants and an external search and investigation support mechanism to which Honduran families could submit missing person reports, either directly or through the Mexican embassy in Honduras. In Guatemala, the Honduran authorities worked in close cooperation with ICRC and with the National Institute of Forensic Sciences of Guatemala, which performed database checks on unidentified interred remains. In the United States, the Government of Honduras received support from the Colibrí Center for Human Rights and the University of North Texas Center for Human

Identification. Moreover, recognizing that the Criminal Code focused on the punishment of perpetrators and that there was a need for greater emphasis on the protection of victims, the Government had developed special regulations for that purpose as part of the process of drafting the new Code, drawing on inputs from civil society.

36. **Mr. Velásquez** (Honduras) said that public institutions had been strengthened with a view to the correct administration of justice and that the National Congress had drafted specific laws to protect the human rights of children, young people and women. The process of drafting the new Criminal Code had begun with the formation of a special multipartisan committee that had held a dialogue with all sectors of society, including the Committee of the Families of Detained and Disappeared Persons in Honduras and the Office of the National Commissioner for Human Rights. The Government had held consultations throughout the country, including in cities such as San Pedro Sula, Choluteca and La Ceiba. The resulting draft had been reviewed article by article by the National Congress and was now ready for publication. In particular, under article 140, anyone who committed the crime of enforced disappearance was punishable by 15 to 20 years' imprisonment; under article 139, when the crime was carried out systematically and thus constituted a crime against humanity, the perpetrator was punishable by 30 years' to life imprisonment, accompanied by suspension of citizenship and general disqualification for the duration of the sentence. Article 153 provided that superiors who were held criminally responsible should receive the same punishment as the direct perpetrator of the act.

37. **Mr. Huhle** said that he was grateful for the clarification that the reference, in the State party's written replies, to a single instance of enforced disappearance prior to 2010 related only to cases that were still being investigated or prosecuted by the Public Prosecution Service. He was interested to know more about the number and status of the other cases that had occurred prior to 2010. Had the Public Prosecution Service clarified the fate of the individuals in question? He asked the State party to provide consolidated information on the number of cases of disappearance, not just the number of investigations, recorded both before and after the entry into force of the Convention.

38. Concerning the search protocols developed by the State party, he would appreciate receiving more detailed information in writing. However, given that the protocols described by the delegation seemed to refer exclusively to human remains, he was curious to know whether the State party had any protocols for finding people who were still alive. He would also welcome details about any joint initiatives undertaken for that purpose with the authorities of Guatemala, Mexico and the United States.

39. **Ms. Galvis Patiño** said that it would be helpful if the delegation could provide the Committee with a copy of the new text of the Criminal Code. She would appreciate further information on the provisions of the Code that related to the responsibility of superiors for crimes of enforced disappearance. In particular, it was unclear what distinction was made between public officials who gave orders resulting in a crime of enforced disappearance and those who implemented those orders, and in what circumstances a superior could be held responsible for such a crime. Although the State party's report (CED/C/HND/1) mentioned its ratification of the Rome Statute of the International Criminal Court as evidence of its compliance with the Convention, that instrument concerned crimes against humanity, a category that included some but not all cases of enforced disappearance, and its provisions on the responsibility of commanders and other superiors differed from the corresponding provisions of the Convention.

40. As had been noted by the Inter-American Commission on Human Rights, the institutional framework governing the activities of the prosecutors and judges who oversaw the military police seemed to undermine their independence and impartiality, as those prosecutors and judges also had the power to try cases involving military police personnel. In that connection, she wondered what measures had been taken to avoid such conflicts of interest and whether a review of the existing institutional framework had been carried out.

41. **Mr. Ayat** said that he wished to urge the State party to ensure that article 6 of the Convention, which set out clearly the circumstances in which a superior bore responsibility for a crime of enforced disappearance, was fully incorporated into national law. The provisions in question served to prevent impunity and also had a pedagogical purpose. It

should be recalled that crimes of enforced disappearance were often attributable to superiors acting through their subordinates. On a separate point, he noted that the definition of the term "victim" in article 17 of the Code of Criminal Procedure was narrower than the one in article 24 of the Convention, as it excluded certain categories of people if the offence in question had not resulted in loss of life. The legal definition of "reparation" was also narrower than the one in article 24. Lastly, the widespread or systematic practice of enforced disappearance should be identified in national law as a crime against humanity.

42. **Mr. Lara Watson** (Honduras) said that article 140 of the new text of the Criminal Code was a slightly condensed version of article 333-A. It provided that a public official or employee who committed the offence of enforced disappearance was punishable by 15 to 20 years' imprisonment, suspension of citizenship and general disqualification for a period of 20 to 25 years. Under article 153, the same penalties were applicable to authorities, military commanders or persons effectively acting as military commanders who failed to take all necessary and reasonable measures within their power to prevent the commission of such an offence by forces under their command, effective control or authority, and to other superiors who, within their area of responsibility, failed to take measures within their power to prevent the commission of such an offence by their subordinates. The same penalties, reduced by either one third or two thirds, were applicable to military commanders or superiors, or public officials or employees, who failed to take measures within their power to ensure the prosecution of such offences when committed by persons under their command, effective control or authority.

43. A copy of the new text of the Criminal Code would be made available to the Committee. With regard to aggravating and mitigating circumstances, it should be noted that, pursuant to article 69 of the Criminal Code, judges determined the applicable penalty within the boundaries of the maximum and minimum penalties specified by law for a particular offence. Judges took into account various circumstances, including the personal history of the offender, the danger that he or she posed and any aggravating or mitigating circumstances.

44. **Ms. Alvarado** (Honduras) said that the National Inter-Agency Security Force had been established under the Public Prosecution Service to operate on a temporary basis. It was made up of certified prosecutors and judges who were independent of the military police. They represented and defended the interests of Honduran society, respected the principles of impartiality and objectivity enshrined in national law and were monitored by the Public Prosecution Service. The Security Force handled all cases of violent deaths involving law enforcement officials.

45. The Office of the Special Prosecutor for Human Rights, which reported to the Public Prosecution Service, had a dedicated enforced disappearance unit. The establishment of the unit had made it possible for certain prosecutors to specialize in cases of enforced disappearance.

46. With regard to the total number of recorded cases of enforced disappearance, there seemed to be a discrepancy between the statistics made available to the Committee and those held by the Office of the Special Prosecutor for Human Rights. According to that Office, there had been 163 cases of enforced disappearance in the 1980s and 1990s and 1 case in December 2017. The latter case had been the first recorded since the entry into force of article 333-A of the Criminal Code. Before the offence of enforced disappearance of persons had been established, there had been no unified procedure for registering such cases. The Public Prosecution Service maintained a register of cases of enforced disappearance, and efforts would be made to clarify the discrepancy between the two sets of statistics.

47. **Ms. Villanueva** (Honduras) said that, with regard to search protocols, significant efforts had been made since 2010 to improve the organization of data on disappeared persons. Various stakeholders, including the families of such persons, the police force, the Forensic Medicine Department of the Public Prosecution Service and ICRC, were working in cooperation to ensure that all relevant data were held in one place. Recent years had seen a number of developments, including institutional transformations, the introduction of advanced forensic medicine techniques and capacity-building conducted in association with

ICRC. Those developments had given rise to much discussion of the question of which body should have overall responsibility for ante-mortem data, which were based on interviews with victims' family members and could not be separated from post-mortem data. Cooperation at the regional level was facilitating the development of a dedicated national platform compatible with the international platform.

48. **Mr. Lara Watson** (Honduras), responding to the question on the definition of the term "victim", cited the case of six university students who had disappeared in the 1980s and had subsequently been found alive. In that case, the persons deemed eligible for compensation had been determined in line with the criteria used in a number of Inter-American Court of Human Rights rulings.

The meeting rose at 5.45 p.m.

United Nations CED/C/SR.240

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
29 May 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 240th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 23 May 2018, at 10 a.m.

Chair: Ms. Janina

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Honduras (*continued*)

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08367 (E) 280518 290518

1808367

Please recycle

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Honduras (*continued*) (CED/C/HND/1; CED/C/HND/Q/1 and CED/C/HND/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Honduras took places at the Committee table.*

2. **The Chair**, inviting the Committee to continue its consideration of the initial report of Honduras (CED/C/HND/1), said that the focus would be on measures to prevent enforced disappearances.

3. **Ms. Galvis Patiño** (Country Rapporteur) said that, while the Committee was grateful for the information provided on domestic legislation relevant to the object of article 16 of the Convention, it would be useful to hear more about the criteria used to assess the risk of a person's being subjected to enforced disappearance following his or her expulsion, return, surrender or extradition to another State; the criteria used to determine the maximum duration for which a person could be held in administrative detention pending a decision on the implementation of any such measures; and the remedies available for appealing against decisions to implement such measures. The delegation might also indicate whether such appeals had suspensive effect.

4. The Committee had received reports that, despite the State party's assurances to the contrary, persons deprived of their liberty were not always informed of their right of access to a lawyer, a physician, a family member or any other person of their choice from the moment of deprivation of liberty. It was also her understanding that persons with a legitimate interest were not always granted access to detention records and that persons in police custody often did not receive a medical examination by an independent physician. Moreover, the Committee had been informed that persons detained following the 2017 national elections had been denied access to a lawyer and members of their family and that there had been delays in processing their applications for habeas corpus. She asked whether any formal complaints of failure to respect the rights referred to in article 17 of the Convention had been filed and, if so, what action had been taken and whether any penalties had been imposed. It would also be useful to learn more about the measures in place to ensure that, in practice, there was prompt communication with consular authorities in cases where the person deprived of liberty was a foreign national.

5. She would welcome the delegation's comments on reports that the State party's national mechanism for the prevention of torture did not enjoy unrestricted access to places of deprivation of liberty, particularly maximum security prisons. She asked what measures the State party had adopted or planned to adopt to give full effect to article 17 (2) (e) of the Convention.

6. Furthermore, the Committee had found that the provisions of article 321 of the implementing regulations of the National Prison System Act, which specified the details to be included in inmate registers in detention facilities, were not fully aligned with the provisions of article 17 (3) of the Convention; she asked when the State party intended to adapt its inmate registers accordingly. Although Honduran legislation provided for the remedy of habeas data, it appeared that, in practice, not all persons with a legitimate interest could have access to the information mentioned in article 18 of the Convention by that means. She asked how the State party guaranteed the right of any person with a legitimate interest to have access to the information contained in inmate registers.

7. Lastly, she would like to know the outcome of the review of the training programmes for judicial institutions and whether there were plans to introduce specific, stand-alone training programmes on the Convention and the prevention of enforced disappearance for police officers, prison staff and persons involved both in the search for disappeared persons and in the investigation and prosecution of cases of enforced disappearance. It would also be useful to know whether there were plans to adopt criteria for measuring the effectiveness of such training programmes as part of the review.

8. **Mr. Huhle** (Country Rapporteur), noting that the definition of "victim" set out in article 17 of the Code of Criminal Procedure was somewhat narrow, asked whether the State party had considered aligning it with the one contained in article 24 (1) of the Convention. While he understood that victims of enforced disappearance had to initiate criminal proceedings in order to be recognized as such and that the criminal courts alone were competent to grant that status, it would be useful to know whether victims of enforced disappearance could obtain compensation through non-judicial channels. The Committee would also be interested to know whether there were plans to establish the historical truth about the circumstances and causes of enforced disappearances in Honduras as a means of promoting the right of victims to know the truth. It would likewise appreciate an update on the status of the national reparations programme.

9. Noting that article 84 of the Civil Code stipulated that a missing person was to be presumed dead five years after he or she had last been heard from, he asked what action would be taken if, after five years had elapsed, the missing person in question was found alive. He also asked what legal effects were produced by the entry of a presumed death in the national civil registry and how it affected the search for the missing person in question. He asked whether the State party had considered taking legislative measures to introduce the concept of declaring a person "missing by reason of enforced disappearance" as an alternative to declaring his or her presumed death. Declaring a person "missing by reason of enforced disappearance" could serve to resolve a range of civil law issues while sparing victims' families the emotional distress associated with declaring the presumed death of a loved one.

10. He would welcome more details on the competence of the Violent Death Unit of Bajo Aguán, which had investigated the deaths of persons linked to agricultural conflicts and had conducted exhumations, some of which had resulted in judicial proceedings. He would like to know whether any of those deaths had been the result of enforced disappearance and whether the judicial proceedings initiated in that connection related to that specific crime.

11. He would also be grateful if the delegation could provide an overview of the search mechanisms in place for persons believed to still be alive and of the measures taken by the State party to ensure that persons suspected of having committed an offence of enforced disappearance were not in a position to influence the progress of an investigation. He asked how the State party guaranteed family members' right to participate in the search for their missing loved ones, what dialogue mechanisms were available to victims of enforced disappearance in their search for truth, justice and reparation, and whether associations that performed that function needed to have legal personality. It would also be helpful to learn more about the scope and impact of the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, including whether it covered persons assisting victims of enforced disappearance, and about the State party's efforts to involve victims of enforced disappearance in devising protective measures as a means of preventing revictimization.

12. The Committee would also like to receive statistical data on children reported missing in Honduras or in neighbouring transit countries and to know how many of those children were potential victims of enforced disappearance or human trafficking. He asked whether the State party was aware of any cases concerning adoptions that had originated in enforced disappearance and, if so, what measures it had taken to deal with them under civil and criminal law. He would be grateful if the delegation could confirm whether the bill on adoption submitted to the National Congress in late 2016 had been passed and, if applicable, describe its impact. It would also be useful to hear more about the impact of the "AMBER Alert" system for tracing and protecting missing or abducted children and adolescents, and the work of the national coordinating committee responsible for its implementation.

13. **Mr. Ravenna** said that the State party's practice of declaring the presumed death of missing persons after only five years was arguably at variance with its stated position that enforced disappearance should be dealt with as a continuous offence. The State party should give serious thought to introducing the concept of declaring a person "missing by reason of enforced disappearance" instead of declaring his or her presumed death, to help

resolve civil law issues such as inheritance and to avoid the potentially negative impact that a declaration of presumed death could have on efforts to search for missing persons.

The meeting was suspended at 10.25 a.m. and resumed at 10.50 a.m.

14. **Mr. Rizzo Alvarado** (Honduras) said that the Directorate General for the Protection of Honduran Migrants handled cases of missing migrants, the majority of whom had been found by the Honduran consular authorities in migrant detention centres, hospitals or morgues. There were, however, some 440 migrants who had not yet been located. The consular authorities had set up a search mechanism in an effort to establish the whereabouts of those migrants. Reports of missing migrants could be transmitted to the Directorate General directly by either family members or a State institution. The Directorate General then referred the case to Honduran migrant protection centres within 24 hours. Those centres then referred the case to the consular authorities, who checked the missing migrant's name against databases of returned Honduran migrants and Hondurans who had availed themselves of consular services and against the database of persons having obtained electronic travel documents to enter the United States of America, in addition to those maintained by the United States Border Patrol. Searches were also conducted in the desert, migrant holding centres, prisons and hospitals, in the hope of finding missing migrants alive. Family members could contact the consular authorities to report a relative missing and could follow up on a case by telephoning a country-specific hotline or accessing the relevant website. To date, 46 missing migrants had been found alive. The delegation could submit additional information on the search mechanism to the Committee in due course.

15. **Ms. Cueva** (Honduras) said that the principle of non-refoulement was enshrined in the Migration and Aliens Act and its implementing regulations. With a view to assessing the risks involved in deportation cases, the authorities interviewed foreign nationals to obtain basic information, such as their name, nationality, civil status, the names of their parents and spouse, and the motive for leaving their country of origin and for transiting Honduras. They were then informed about the relevant procedures. The authorities were required by the Act to provide legal assistance, to guarantee due process and, if necessary, to provide psychological and medical care. They also contacted the embassy or consulate of the person's country of origin. An appeal could be filed against any decision regarding deportation and the person concerned could not be deported until a final decision was handed down.

16. The National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had issued a report on its monitoring and capacity-building activities and on the processing of complaints and the issuance of recommendations. In recent years more than 400 visits, most of them unannounced, had been conducted to prisons, police stations, juvenile detention facilities and psychiatric hospitals. At the request of the Ministry of Human Rights, Justice, Governance and Decentralization, the National Committee had recently made further monitoring visits, inter alia to maximum-security prisons, and had issued its findings and recommendations.

17. Human rights defenders who faced risks or were subjected to harassment had access to an emergency hotline. Under article 5 of the implementing regulations of the Act on the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials, recognition of the legal personality of an organization or individual was not a prerequisite for participation in the National Protection Council. Persons who believed that they were at risk could actively participate in the risk assessment process and in the deliberations of the Technical Committee of the Protection Mechanism, which was composed of representatives of the Ministry of Security, the Public Prosecution Service, the Ministry of Human Rights and the Office of the Special Prosecutor for Human Rights. Representatives of the Office of the National Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights in Honduras (OHCHR-Honduras) also attended those meetings. Protection was currently provided for 211 persons, 3 of whom worked as human rights defenders for victims of enforced disappearance.

18. **Ms. Alvarado** (Honduras) said that since the establishment of the Violent Death Unit in February 2014 there had been a marked decrease in the number of deaths in Bajo Aguán. Approximately 121 deaths had occurred, but none had been attributable to enforced

disappearance. The Public Prosecution Service had provided mobile morgues in Tocoa to support the on-site work of public prosecutors. There had been 55 exhumations in the Bajo Aguán area in 2014 and 2015, 5 in 2016 and 21 in 2017. Legal proceedings had been instituted in 34 cases and there had been 12 convictions and 3 acquittals. There were also 95 pending arrest warrants.

19. If missing persons who had been presumed to have died eventually reappeared alive, the cause of their disappearance continued to be investigated, inter alia to determine whether the case involved enforced disappearance, abduction, torture, unlawful detention or some other crime. As there was no statute of limitations for the crime of enforced disappearance, investigations and prosecutions continued even if the victim was never found and a declaration of presumed death was issued.

20. The amnesties declared in the 1990s had been found by the Supreme Court of Justice to be inapplicable to cases of human rights violations. The Constitutional Chamber of the Court had also ruled that Amnesty Decree No. 2-2010, which had been issued after the coup d'état, was not applicable to human rights violations.

21. **Mr. Chinchilla** (Honduras) said that all inmate registers complied with international standards. They contained, inter alia, the inmate's identification number, name, sex, nationality, address, occupation, civil status, place of origin, residence, employment status, telephone numbers, and health status. They also contained the inmate's signature and fingerprint and information on the grounds for detention, confiscated personal possessions, the detaining authorities, and the date, time and place of detention.

22. **Ms. Villanueva** (Honduras) said that a major process of identification of all persons deprived of their liberty would be launched in June 2018. An information technology tool would be used to gather personal information, fingerprints, dental records and genetic profiles. The procedure would comply with the provisions of a new law on human identification and genetic data banks that would shortly enter into force.

23. The "AMBER Alert" Act had been promulgated in December 2016 with a view to tracing and protecting child victims of abduction or disappearance and would enter into force in September 2018. The Act, which had been drawn up by the Directorate for Children, Adolescents and the Family, would be disseminated through the media and implemented throughout the country. A register of cases involving child victims would be established. There was no record to date of child victims of enforced disappearance in Honduras.

24. **Ms. Bardales** (Honduras), replying to a question about capacity-building in the area of prevention and investigation of enforced disappearances, said that there had been no such training in the Ministry of Defence or the Ministry of Security prior to 2017. However, arrangements had been made for training by national experts, including a former ombudsman, during the second half of 2018.

25. **Mr. Mejía Tinoco** (Honduras) said that criminal courts were responsible for determining which persons should be recognized as victims in cases of enforced disappearance; convictions in such cases entailed civil reparations for victims. Under an amicable settlement procedure, compensation had been provided to parents, children and others who were directly affected by such crimes. The level of compensation was ascertained through an analysis of the degree of harm suffered. The country's legislation did not specifically establish who had the status of a victim in cases of enforced disappearance. However, the Constitution stipulated that any ratified treaty formed part of domestic legislation.

26. **Mr. Lara Watson** (Honduras) said that the draft legislation under consideration included a bill on adoption, a bill on a national registry of missing or disappeared persons and a bill on full reparation for victims of human rights violations due to State acts or omissions. The authorities were well aware of the importance of enacting legislation based on the Committee's recommendations and of ensuring that it was implemented by the competent national bodies.

27. Under the bill on adoption, any adoption that failed to comply with article 141 of the Family Code or that was based on coercion or illicit aims was null and void. There was a

programme that provided for an inter-institutional response to any disappearances of children that occurred as a result of illegal adoptions.

28. **Ms. Galvis Patiño** said that she would appreciate clarification of the criteria used in the State party to evaluate the risk of a person's being subjected to enforced disappearance in the event of expulsion, refoulement, return, surrender or extradition.

29. While it was encouraging that, in 2014 and 2015, the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment had conducted more than 400 visits to places of detention, she was concerned at reports that, in practice, the Committee's access to certain prisons and ability to interview enforcement judges and Public Prosecution Service officials had been limited. The problem appeared to be particularly acute in detention facilities controlled by the armed forces. With that in mind, she asked how long the facilities in question would remain under military control.

30. Lastly, she had heard no reply to her question on the steps taken to ensure the effectiveness of training for public officials in the area of enforced disappearance.

31. **Mr. Huhle** said that, during the interactive dialogue, the delegation had referred to provisions on the definition of "victim" and on victims' right to reparation that appeared to be broader and more protective than those mentioned in either the initial report or the replies to the list of issues. It would be helpful to receive written confirmation of the contents of those provisions in due course.

32. Noting with satisfaction the cooperation between the Government and OHCHR-Honduras, he asked whether the State party was committed to keeping the Office open and what the Office's future priorities would be, aside from the protection of human rights defenders and victims of enforced disappearance.

33. According to paragraph 73 of the replies to the list of issues, the Violent Death Unit of Bajo Aguán had investigated the deaths of 118 persons and had carried out 57 exhumations, 26 of which had resulted in judicial proceedings. What were the suspected offences to which those investigations related?

34. He would welcome a response from the delegation to reports that missing Honduran children had been put up for adoption in Mexico. One such report dated back to the 1980s and related to the Villalta family. Was the Government aware of the alleged cases and, if so, what was being done to clarify the circumstances surrounding them?

35. He would be grateful for examples of instances in which international provisions on the definition of a victim of enforced disappearance had been applied in the State party, bearing in mind that existing domestic legislation did not contain a definition in line with article 24 of the Convention, which established that "victim" meant any individual who had suffered harm as the direct result of an enforced disappearance. He also wished to know whether the FTA cards described in paragraph 152 of the initial report were used only for migrants or for all missing persons, regardless of their status.

The meeting was suspended at 11.45 a.m. and resumed at 11.55 a.m.

36. **Ms. Cueva** (Honduras) said that the principle of non-refoulement was reflected in articles 42 and 45 of the Migration and Aliens Act and that the Government worked closely with the Office of the United Nations High Commissioner for Refugees to guarantee compliance with the Convention relating to the Status of Refugees in evaluations of the risk of enforced disappearance.

37. All prison facilities were administered by the National Prison Institute, a civilian body. Over the previous four years, significant efforts had been made with regard to the training of prison officials and, in 2016, the National Penitentiary Academy had been created. Allegations that independent monitoring mechanisms did not have free access to places of detention should be reported through official channels to the relevant authorities, namely the Office of the National Commissioner for Human Rights and the Office of the Special Prosecutor for Human Rights. The Government had not been made aware of any access issues faced by the National Committee for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment.

38. OHCHR-Honduras had been opened pursuant to a request made by the Government in 2014, and it was currently operating under a 10-year agreement. The Office's priorities included developing and supporting the national mechanism for the protection of human rights defenders, providing technical assistance to facilitate the establishment of the Recommendation Monitoring System of Honduras, strengthening the National Protection Council and cooperating with civil society organizations.

39. **Ms. Alvarado** (Honduras) said that the criminal investigations conducted in Bajo Aguán had been launched in relation to suspected murders. None of the cases in question were thought to have involved enforced disappearance.

40. **Ms. Villanueva** (Honduras) said that measures were being taken to strengthen the protection of the rights of children and adolescents, in particular through the Directorate for Children, Adolescents and the Family. It was not known what had happened to the Villalta family in the 1980s, but a full investigation would be carried out. FTA cards could be used to preserve the genetic information of any person for any purpose.

41. **Mr. Lara Watson** (Honduras) said that, although existing domestic legislation contained a definition of "victim", it did not define the term in the specific context of enforced disappearance. International provisions on victims' right to reparation were applied in the consideration of petitions filed before the Inter-American Commission on Human Rights, and the jurisprudence of the Commission and the Inter-American Court of Human Rights was taken into account in Honduras.

42. **Ms. Cueva** (Honduras) said that one example of action that had been taken as a form of reparation was the donation, by the Government, of funds to an association acting on behalf of six students who had been kidnapped and detained in 1982. The association had used the money to purchase the building in which the students had allegedly been held and planned to convert it into a museum of historical truth.

43. **Ms. Galvis Patiño**, thanking the delegation for its frank replies, said that the Committee would appreciate receiving a copy of the new Criminal Code and updates on any developments of relevance to the Convention as part of its ongoing dialogue with the State party.

44. **Ms. Cueva** (Honduras) said that, while important steps had been taken to implement the Convention in Honduras, many challenges undoubtedly remained. The Committee's concluding observations would help to guide the Government's actions and would be added to the Recommendation Monitoring System of Honduras.

45. **The Chair** said that she wished to thank civil society organizations for their contribution to the Committee's work. Given the important role that such organizations played in combating enforced disappearance and protecting victims' rights, she hoped that they would continue to be able to cooperate freely with the Committee, without threat or intimidation.

The meeting rose at 12.10 p.m.

United Nations CED/C/SR.241

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
29 May 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 241st meeting
Held at the Palais Wilson, Geneva, on Wednesday, 23 May 2018, at 3 p.m.

Chair: Mr. Huhle (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08370 (E) 280518 290518

1808370

Please recycle

Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria (CED/C/AUT/1; CED/C/AUT/Q/1 and CED/C/AUT/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Austria took places at the Committee table.*

2. **Mr. Tichy** (Austria), introducing his country's initial report (CED/C/AUT/1), said that, for Austria, cooperation with the Committee was not just an obligation under the Convention but also an act of solidarity with victims and their families and an expression of the country's commitment to combating enforced disappearances. Austrian history had shown how quickly a regime lacking respect for human rights could take control of a society and how important, thus, were structural international safeguards against all kinds of human rights violations. The initial report was the fruit of several rounds of consultations with numerous stakeholders, including government entities and civil society.

3. His country had a well-defined body of law giving effect to the provisions of the Convention. After the Convention's entry into force, the Criminal Code had been amended to include, among other changes, a new section 312 (b) introducing the offence of "enforced disappearance of a person". Under that section, any person who deprived another person of the latter's personal liberty on behalf of or with the acquiescence of a state or a political organization and concealed the fate or whereabouts of the missing person was subject to imprisonment for between 1 and 10 years and, in the case of abuse of official authority, up to 15 years. One investigation had already been carried out under the new provision, in connection with an alleged attempt to perpetrate an enforced disappearance in Syria. Another new section, 321 (a), classified enforced disappearances engineered as part of a widespread or systematic attack against a civilian population as crimes against humanity.

4. Austria had comprehensive mechanisms and procedures for monitoring the compliance of federal and regional government entities with the country's human rights obligations and standards. The three-member Austrian Ombudsman Board, elected by Parliament, served as the national human rights institution and, together with its six regional expert commissions, as the oversight mechanisms required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Persons with Disabilities. The Government's work programme for the period 2017–2022 included the establishment of a similar independent oversight mechanism relating to police powers. A study by the University of Vienna on allegations of ill-treatment by law enforcement officers was expected to be finalized shortly. On the basis of its outcome, the regulations of the federal ministries of justice and the interior governing ill-treatment by law enforcement officers would be amended.

5. Under the new arrangements for data protection that would come into effect on 25 May 2018, every State agency would have to appoint a data protection officer tasked with ensuring compliance with the standards and safeguards of the European Union's General Data Protection Regulation. The competence of the national data protection authority had also been broadened.

6. In the autumn of 2015, Austria had been confronted with an unprecedented influx of refugees and migrants. Many of those arriving had belonged to vulnerable groups, such as unaccompanied minors. The Government, with the support of Austrian aid organizations and civil-society volunteers, had done its best to provide humanitarian help while complying with the country's obligations under refugee and human rights law. Nevertheless, the sheer number of people, including many without travel documents, had made it difficult to identify individuals and to keep track of their whereabouts after registration. Unaccompanied minors posed a particular challenge in that regard — a challenge that the authorities took very seriously. In 2017, the United Nations Children's Fund had organized

training on child protection and children's rights for all executive bodies of the care institutions run by the Federal Ministry of the Interior to raise awareness of the need to accord special protection to unaccompanied minors seeking asylum.

7. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that he would welcome more information on how civil-society actors had participated in the preparation of the report. He requested clarification of the statement in paragraph 2 of the replies to the list of issues (CED/C/AUT/Q/1/Add.1) that the Convention had the status of a law in Austria and was directly applicable insofar as its provisions were sufficiently precise, and specifically as to whether the Convention truly took precedence over national legislation. He asked whether the Ombudsman Board complied with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and, if not, what measures were planned to remedy the situation.

8. The Committee would appreciate clarifications concerning paragraph 10 of the replies to the list of issues, which stated that there was no express prohibition against invoking a state of necessity or a public emergency to justify any violation of or restrictions on human rights and freedoms. He wondered whether legislation or practices put in place to counter terrorism had influenced the application of the Convention.

9. He would welcome information on the omission from section 312 (b) of the Criminal Code of refusals to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of a disappeared person. Were such acts, when committed by agents of the State, covered elsewhere in Austrian law? He also wished to know if political organizations were covered by the provisions of section 312 (b) of the Criminal Code. Some of the penalties outlined in the Criminal Code for offences relating to enforced disappearance did not seem to match the gravity of the crimes in question. He wondered to what extent they were in keeping with article 7 (1) of the Convention.

10. **Ms. Janina** (Country Rapporteur) asked how Austrian law determined whether a continuous crime of enforced disappearance had ended. Did the law include a legal definition of a continuous crime? She would appreciate examples of crimes that would be considered continuous under national legislation. The 10-year statute of limitation for crimes of enforced disappearance seemed insufficient. The Committee noted that it could be extended under certain circumstances and would welcome mention of examples of such circumstances.

11. She asked the delegation to clarify the information in paragraph 60 of the report about jurisdiction in cases of enforced disappearance where Austrian interests other than the Austrian nationality of the offender or the victim were infringed, and in cases where the offender was a foreign citizen but had his or her common residence in Austria. Was the principle of no requirement of double criminality applied to all types of crimes and could Austria exercise jurisdiction in cases where a foreign citizen residing in Austria had committed a crime of enforced disappearance?

12. The Committee would also be grateful for further details about the investigation that had been launched into an alleged attempt to perpetrate an enforced disappearance in Syria, including the facts of the case and the authority responsible for conducting the investigation. It would appreciate information about the procedure and functioning of the European Arrest Warrant and cooperation between member States of the European Union in relation to alleged crimes of enforced disappearance.

13. In its replies to the list of issues, the State party had provided comprehensive information on the protection of witnesses; she was curious to know whether the same protection was afforded to the relatives of victims of enforced disappearance, who themselves were victims under article 24 of the Convention. What was the legal position of individuals who approached the authorities to report the disappearance of a family member?

14. The Committee noted that the Code of Criminal Procedure contained several provisions that dealt with conflicts of interest in the context of investigations, notably section 47 on the impartiality of the criminal investigation department and the public prosecutor's office. While recognizing that persons in authority were expected to abstain voluntarily from participating in investigations in the event of a perceived conflict of

interest, she wished to know who was responsible for preventing conflicts of interest in the event that the official in question did not abstain. Did the obligation to abstain apply only to individuals, or did it extend to entire units or structures within the competent authority? The delegation might also provide general information on the study by the University of Vienna on allegations of ill-treatment by law enforcement officers, including the number of claimants, the number of people accused of ill-treatment and the outcomes of the claims.

15. She would be grateful for an explanation of what was meant in Austrian legislation by the term "extradition asylum". Moreover, considering that paragraph 78 of the initial report stated that the offence of enforced disappearance was "in conformity with all relevant multilateral conventions [...] and all of Austria's bilateral extradition treaties, including with Australia, Canada and the United States", she wondered whether the State party treated enforced disappearance as an extraditable crime even with countries that were not party to the Convention. Similarly, given that mutual legal assistance was regarded as possible on the basis of domestic law, even in the absence of a bilateral treaty, provided that the foreign authority was ready to reciprocate in comparable cases, she asked what kind of crimes might be deemed comparable in the event that the State party was asked to provide assistance in a case of enforced disappearance.

16. **Mr. Decaux** said that he wished to know whether the case of alleged attempted enforced disappearance in Syria was being investigated as a crime against humanity under article 5 of the Convention, or as a crime committed by State or non-State actors, as envisaged under articles 2 and 3, respectively.

17. **Mr. Teraya**, noting that the Convention had the status of a law and that ordinances issued in the context of emergency measures must not be in conflict with the Federal Constitution, said that he would like to know more about the domestic legal hierarchy and whether a conflict might arise between the Convention and the Federal Constitution. He also wished to know how the State party ensured respect for human rights in the event of a state of necessity or a public emergency.

18. **Mr. Baati** said that he would appreciate an explanation of the three-day delay between the publication of the Federal Law Gazette and the entry into force of the Convention, considering that laws usually entered into force automatically upon publication. He asked how the State party reconciled the independence of the Austrian Ombudsman Board and the selection of its members by political parties. He also wished to know whether the reference to "political organizations", which had been added to section 312 (b) of the Criminal Code, included political parties. In respect of the new provisions on data protection, he would like to know whether the Ombudsman Board or another authority was in charge of overseeing compliance with personal data protection legislation. Lastly, he wondered whether the admissibility criteria that were considered when responding to extradition requests included the risk that the individual might be subjected to inhuman treatment in the requesting country.

19. **Ms. Galvis Patiño** asked whether any discussions had arisen in the State party in respect of provisions of the Convention that were not deemed precise enough to be directly applicable.

The meeting was suspended at 3.55 p.m. and resumed at 4.15 p.m.

20. **Mr. Tichy** (Austria) said that government ministries and agencies cooperated closely with non-governmental organizations (NGOs), participated in meetings and working groups with them and received their requests and demands. The Government also held an annual event for human rights NGOs at which issues of practical relevance were discussed. Austrian NGOs had been informed about the preparation of the initial report and the review of the State party before the Committee; however, enforced disappearance was not a major focus of concern in Austria and so their contribution to the process had been limited.

21. In the Austrian legal order, international treaties ratified by Parliament had the same status as laws but did not prevail over them. Although it was therefore possible that a law might come into conflict with a law of equal status giving effect to an international treaty obligation, that had not yet happened in relation to the Convention, and the Federal

Ministry for Europe, Integration and Foreign Affairs took steps to prevent such situations occurring. Concerning the statement that the Convention was directly applicable and self-executing "insofar as its provisions were sufficiently precise", the tradition in Austria was that criminal provisions — even precise ones — contained in treaties were not applied directly but were rephrased and inserted into the Criminal Code. For example, the Government had drafted the new section 312 (b) of the Criminal Code, which covered the provisions of articles 2 and 3 of the Convention, obviating any need for their direct application. In the past, the Government had considered that existing domestic criminal law provisions were sufficient to meet its international treaty obligations; for example, provisions on murder and manslaughter were used to deal with war crimes. However, more recently, it had decided that it was preferable to include in the Criminal Code specific new provisions derived from different sources of international law, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court.

22. The political dimension of the selection of the members of the Ombudsman Board, the reason for its B status under the Paris Principles, had originally been instituted to ensure representation of a third, minority, political party. Under the Constitution, the three members of the Board were nominated by the three main political parties and subsequently elected by Parliament. However, the Board had demonstrated its independence in the 40 years since its establishment: the members always acted with full independence and were extremely demanding in their requirements of the authorities being monitored.

23. As to the adoption of emergency measures, although the Federal President had the power to do so in certain circumstances, such an event had never occurred. In any case, a number of safeguards were in place to ensure that the human rights enshrined in the Constitution could not be suspended or restricted. Terrorism had not affected Austria as seriously as some other European countries and those cases that had occurred had been addressed under ordinary criminal laws.

24. The definition of enforced disappearance under section 312 (b) of the Criminal Code differed from that provided in article 2 of the Convention in the inclusion of "political organizations" and the exclusion of "refusal to acknowledge the deprivation of liberty". The inclusion of the concept of "political organizations" was intended to broaden the provision on enforced disappearances in a way that took account of article 3 of the Convention, on the understanding that "political organizations" were entities that exercised de facto governmental authority, without necessarily being State actors.

25. **Ms. Pampalk-Lorbeer** (Austria) said that the reason for the omission from section 312 (b) of the Criminal Code of an explicit reference to the "refusal to acknowledge the deprivation of liberty" was the perceived inconsistency of such a reference with the constitutional right not to be compelled to testify against oneself. However, the overall effect of the omission was to broaden the scope of the Austrian definition of enforced disappearance, as fewer elements had to be proved in order to establish the guilt of a perpetrator.

26. The ordinary offence of enforced disappearance carried a penalty of 1 to 10 years' imprisonment, but the maximum penalty was increased to 15 years for public officials who committed the offence through abuse of office. Perpetrators of crimes of enforced disappearance who intentionally caused the death of the victim were prosecuted for the offence of murder, which carried a penalty of 10 to 20 years' imprisonment or life imprisonment. In the event that an act of enforced disappearance constituted a crime against humanity, the applicable penalties were 5 to 15 years' imprisonment, 10 to 20 years' imprisonment if death was caused through negligence or life imprisonment if death was caused intentionally. While it was theoretically possible for a judge to impose the minimum penalty of 5 years' imprisonment on the perpetrator of an act of enforced disappearance that constituted a crime against humanity, it was highly unlikely that would ever happen, as the judge would be required to take into account any mitigating and aggravating circumstances.

27. The term of limitation for a given offence was linked to its maximum applicable penalty and did not commence until the objective elements of the offence had ceased. In that regard, the offence of enforced disappearance was comparable to the offence of

deprivation of liberty, established in section 99 of the Criminal Code, as they were both continuous in nature. The term of limitation was suspended in certain circumstances. For example, if the victim was a minor, the term of limitation did not commence until he or she had reached the age of 28 years. The term of limitation was also suspended in the event that criminal action was taken against the perpetrator. There was no term of limitation for crimes against humanity.

28. With regard to acts of enforced disappearance committed outside the territory of Austria, section 64 of the Criminal Code empowered the State to exercise jurisdiction in cases in which either the perpetrator or the victim of the crime was an Austrian national, other Austrian interests had been infringed or the perpetrator resided in Austria and could not be extradited. The principle of double criminality did not apply to the offences specified in section 64. Section 65 also empowered the State to exercise jurisdiction with respect to crimes committed in another State, but only if they constituted offences under the laws of that State. In late 2017, an investigation had been opened in connection with an allegation of attempted enforced disappearance in Iraq, not Syria as had earlier been stated, in 2015. The case had fallen under Austrian jurisdiction because both the alleged perpetrator and the alleged victim had been residing in Austria. It had ultimately been closed for lack of evidence.

29. The Code of Criminal Procedure set out the circumstances in which family members could be considered victims of an offence. The family members of a disappeared person whose death had not been confirmed were considered victims and enjoyed all associated rights. The rights of victims had recently been strengthened in Austria.

30. Members of the criminal police and prosecutors were required to withdraw from cases in which their independence was compromised. Persons whose rights had been infringed in the course of proceedings were entitled to remedies. Victims could request the resumption of proceedings that had been suspended. Judges were required to recuse themselves from cases in which their independence was compromised, and failure to do so would nullify any judgment issued. The rules governing the independence of the criminal justice system were applied very strictly, but their application in a particular case would depend on its precise circumstances.

31. **Ms. Walser** (Austria) said that the data protection officers to be appointed by every government agency before 25 May 2018 would be responsible for ensuring the implementation of data protection regulations, in particular the General Data Protection Regulation. Although they were public officials, they enjoyed full independence in the performance of their duties and had access to all information necessary to evaluate the compliance of their agency with data protection regulations. However, their role was an advisory one and they could not impose sanctions. Data protection officers had already been appointed for three branches of the justice system. Persons whose data had been leaked or improperly used were entitled to bring a case before the independent Austrian Data Protection Authority, which had the power to issue a warning or an official order with which the government agency concerned would be required to comply. In some cases, criminal proceedings could be brought under sections 302 and 310 of the Criminal Code. The applicable penalties varied in accordance with the severity of the offence, the maximum being 5 years' imprisonment. Investigations had been opened in 10 recent cases, and a fine of €5,000 had been imposed in one case.

32. **Mr. Tichy** (Austria) said that international instruments were promulgated in the Federal Law Gazette once the minimum number of ratifications required for their objective entry into force had been reached. If the date of an instrument's entry into force for Austria was not specified in the Gazette, it would automatically be the day after its promulgation. The Convention had been promulgated in the Federal Law Gazette on 4 July 2012. It had been specified that, as the relevant instrument of ratification had been deposited on 7 June 2012, the Convention would enter into force 30 days later, on 7 July 2012, in accordance with its article 39 (2). The same procedure had been followed for the implementing legislation promulgated in connection with the entry into force of the General Data Protection Regulation on 25 May 2018.

33. **Mr. Figallo Rivadeneyra** said that, while it was vital that international obligations related to criminal matters should be incorporated into national law, it would also be interesting to learn whether any of the other provisions of the Convention could be directly invoked. With regard to the compliance of the Ombudsman Board with the Paris Principles, it was problematic that some of the Board's members not only were proposed by political parties, but also were members of political parties. The Paris Principles also had a preventive role to play in terms of the protection of human rights.

34. Although the emergency measures provided for in the Constitution had never been invoked, he wondered what was being done to ensure the full compliance of national legislation with article 1 (2) of the Convention, which stipulated that no exceptional circumstances whatsoever could be invoked as a justification for enforced disappearance.

35. In practice, the omission of explicit reference to the "refusal to acknowledge the deprivation of liberty" from the definition of enforced disappearance contained in section 312 (b) of the Criminal Code would weaken its provisions, as it would prevent public officials who refused to acknowledge the deprivation of liberty of a disappeared person from being held to account. Lastly, it would be helpful if the delegation could provide more information on the position of the criminal investigation department in the institutional hierarchy and the nature of its involvement in the investigation of cases of enforced disappearance.

36. **Ms. Janina** said that she would appreciate clarification regarding the power of judges to invoke the Convention and other international instruments. Although crimes of enforced disappearance were rare in the State party, many of the specific articles of the Convention, particularly those relating to extradition, could be usefully invoked in other contexts. The independence of the Ombudsman Board was threatened not only by the procedure for electing its members, but also by the scope of its functions. In that connection, she wondered how the Ombudsman Board gathered follow-up information on the implementation of its recommendations and what force its recommendations had.

37. It would be helpful if the delegation could provide further clarification regarding section 313 of the Criminal Code, pursuant to which the maximum penalty for the offence of enforced disappearance could be increased if it was committed with intent by a public official. It was unclear in what circumstances a judge would be able to establish the intent of a public official and thus impose the increased maximum penalty.

38. The Convention stipulated that States parties were entitled to establish mitigating and aggravating circumstances for crimes of enforced disappearance, but it was made clear that such circumstances should be specific. She wondered whether consideration had been given to the possibility of doing so for the offence of enforced disappearance or whether analogous provisions that were already in force could be invoked in that context. In addition, it would be helpful if the delegation could explain the concept of a "continuous" offence.

39. She would appreciate clarification regarding the State party's exercise of jurisdiction with respect to crimes of enforced disappearance committed outside its territory. It would also be helpful to receive more detailed information on the investigation that had been opened in connection with the allegation of an attempted enforced disappearance in Iraq, including which body had instigated the investigation and whether it had been opened ex officio or in response to a complaint from the victim. It was unclear whether the investigation had been closed because it had not been possible to establish that the offence of enforced disappearance had been committed or because the fact that the offence had been committed outside the State party's territory had hampered the investigation. In the latter case, she wondered whether the State party had submitted a request to Iraq for mutual legal assistance, as that State, too, was a party to the Convention. Had the victim lodged a complaint regarding the conduct of the investigation, been kept informed throughout the process and had any opportunity to appeal the outcome?

40. Lastly, she would be grateful for a response to her request for information on cases in which officials involved in conducting investigations had resorted to intimidation or in which their impartiality had been compromised and the measures that had been taken in response. Relevant statistics would be particularly helpful in that regard.

41. **Mr. Ayat** said he would appreciate clarification on how the State party considered that including "refusal to acknowledge the deprivation of liberty" or "concealment of the fate or whereabouts of the disappeared person" in the definition of enforced disappearance in article 312 (b) of the Criminal Code might conflict with the right of persons to remain silent.

42. **Mr. Decaux** said that he would be interested to hear whether the Ombudsman Board had contributed in any way to the reporting process. He hoped the delegation could provide more information about the competence and functions of the Board. Did it, like other national human rights institutions, act as an interface between the national and international aspects of human rights questions?

43. **Mr. Teraya** said that he would appreciate specific examples of instances in which judicial bodies had recognized a provision of an international treaty to be self-executing.

44. **The Chair** said that the State party's concern that incorporating the full definition of enforced disappearance, as enshrined in article 2 of the Convention, into domestic law might conflict with the right of persons to remain silent and lead them into self-incrimination, seemed to be based on a misunderstanding. The provisions in article 2 referring to "refusal to acknowledge the deprivation of liberty" and "concealment of the fate or whereabouts" were clearly intended to be applied in the immediate aftermath of a disappearance when the relatives of a missing person turned to the authorities for information about their loved ones and were met with denial.

45. **Mr. Tichy** (Austria) said that it was up to the courts to interpret international treaties, including the Convention, and to determine which provisions were self-executing and directly applicable without implementing legislation. For example, article 1 (2) of the Convention could be directly invoked and no court would ever accept that there were exceptional circumstances that could justify enforced disappearance. Similarly, article 13 of the Convention, which stated that enforced disappearance could not be regarded as a political offence, could be directly applied by the courts in the context of the Extradition and Mutual Assistance Act, according to which extradition was inadmissible for political offences.

46. Recommendations of treaty bodies were taken very seriously. They were examined at government level and then widely distributed for discussion with NGOs. The recommendation to establish a national human rights institution in accordance with the Paris Principles was usually met with the response that such an institution already existed: the Austrian Ombudsman Board. It remained a category B institution, but its statutes could only be changed by amending the Constitution and that, in turn, would require a parliamentary majority that no government seemed likely to achieve in the near future. Members of the Ombudsman Board, like all Austrian citizens, had the right to belong to a political party, but that did not mean that they were unable to fulfil their duties independently and impartially. The Ombudsman Board was very active internationally, particularly in South-Eastern Europe. Often, a member of the Board was also Secretary-General of the International Ombudsman Institute, which had its headquarters in Vienna.

47. **Mr. Ruscher** (Austria) said that, if the impartiality of an official could be called into question because of his or her personal involvement, or that of a family member, in a case, that official had to step aside. Any violation of that obligation could render the official in question liable to a charge of abuse of power. Normally, when prosecutors pursued cases against law enforcement officials, police from a different province would be charged with undertaking the investigation. Witnesses or other persons requiring protection could be kept under police surveillance when there was a suspicion that their life, health or liberty might be in peril. The measures taken depended on the degree of danger the person was considered to be facing, but could go as far as providing a new identity. In any case, any measures were taken only in consultation with the person concerned, who had the right to refuse protection.

48. Non-refoulement was regulated under the Asylum Act, which, in line with the 1951 Convention relating to the Status of Refugees, stated that no one could be extradited or returned to a country where they might face danger. Moreover, the Constitutional Court had the right to intervene in non-refoulement cases because the European Convention for the

Protection of Human Rights and Fundamental Freedoms had the same status as the Constitution, and its article 3 expressly prohibited torture or inhuman or degrading treatment or punishment.

49. **Ms. Pampalk-Lorbeer** (Austria) said that the definition of enforced disappearance in the Criminal Code was close, although not identical, to that given in the Convention. The omission of "refusal to acknowledge" as a constituent element did not reduce protection for victims but it did make the offence easier to prosecute. She took note of the view that article 2 of the Convention was intended to be applied in the immediate response to a disappearance; however, Austria had strict provisions regulating the right to remain silent and avoid self-incrimination, irrespective of whether that occurred in the immediate aftermath of an offence or later.

50. With regard to the continuous nature of enforced disappearance, the domestic legal order categorized offences either by outcome, such as murder, or by conduct, such as unlawful deprivation of liberty, which was contemplated under section 99 of the Criminal Code. Although there was no jurisprudence on enforced disappearance under section 312 (b) of the Code, there was a considerable body of jurisprudence on section 99, which made it clear that, as long as a certain conduct persisted, an offence was deemed to exist.

51. In certain cases, the condition of double criminality did not have to be fulfilled and, once the Austrian authorities had determined that they had jurisdiction over a particular criminal case, it would be pursued under domestic legislation in accordance with the Code of Criminal Procedure. Under section 313 of the Criminal Code, when a criminal offence was perpetrated by a State official who abused his or her position to commit the offence, the penalty could be increased by 50 per cent. For example, in a case of enforced disappearance, the maximum sentence of 10 years could be increased to 15 years. In determining the exact sentence, judges had to abide by certain strict parameters such as the impact and damage caused by the crime and the attitude of the perpetrator before the law. They also had to take due account of aggravating factors — such as the particular vulnerability of the victim — and mitigating factors — such as an effort on the part of a perpetrator to make good the damage caused.

The meeting rose at 5.50 p.m.

United Nations CED/C/SR.242

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
29 May 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 242nd meeting
Held at the Palais Wilson, Geneva, on Thursday, 24 May 2018, at 10 a.m.

Chair: Mr. Huhle (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria (*continued*)

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08505 (E) 280518 290518

1808505

Please recycle

Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Austria (*continued*) (CED/C/AUT/1; CED/C/AUT/Q/1 and CED/C/AUT/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Austria took places at the Committee table.*

2. **Mr. Figallo Rivadeneyra** (Country Rapporteur), noting that the State party had been confronted in autumn 2015 with an unprecedented influx of refugees and migrants, many of whom had belonged to vulnerable groups, such as unaccompanied minors, said that the Committee would like to know whether the amendment to the Asylum Act adopted in that context was compatible with the principle of non-refoulement.

3. The effectiveness of the State party's implementation of the Dublin Regulation, which established the criteria and mechanisms for determining which State was responsible for examining an asylum application, was of key importance, and a large number of shortcomings still needed to be addressed. He requested additional information regarding the criteria and mechanisms that were currently in place in the State party to assess the risk of enforced disappearance and risks to persons' lives and security in the context of extradition or deportation procedures. He also wished to know whether the safeguards provided through such assessments had been addressed in the proposed amendments to the legislation that were currently being discussed in the Austrian Parliament.

4. He asked whether persons taken into custody were automatically entitled to have prompt access to legal counsel, regardless of the circumstances leading to detention, for instance in cases of flagrante delicto, and whether detainees without financial means were immediately granted access to free legal aid. According to paragraph 59 of the replies to the list of issues (CED/C/AUT/Q/1/Add.1), a court decision was required in such circumstances and that procedure could presumably take some time.

5. According to paragraph 61 of the replies, only a couple of complaints had been filed concerning delays or failure by officials to record a deprivation of liberty. He asked what action was taken against officials responsible for such negligence. It seemed that the planned mandatory training modules in the area of fundamental rights for future judges, public prosecutors and prison staff did not cover enforced disappearance; he therefore wished to know whether specific training courses would be developed on the rights enshrined in the Convention.

6. **Ms. Janina** (Country Rapporteur) said that the definition of a victim in article 24 of the Convention included not only a disappeared person but also any person who had suffered harm as a result of an enforced disappearance. Under section 65 (1) (a) of the State party's Code of Criminal Procedure, a victim was defined as any person who was exposed, through a deliberately perpetrated criminal act, to violence, intimidation or other forms of moral or material damage. The word "deliberately" implied that *mens rea* was an element of the offence. As that did not constitute an element of the offence of enforced disappearance, she wished to know whether the definition restricted the scope of the protection afforded to victims. Section 65 (1) (c) of the Code included in the definition of a victim any other person who could have suffered damage as a result of the offence. She wished to know whether "damage" referred only to physical harm and whether a victim of enforced disappearance could be covered by the provision.

7. Article 24 of the Convention also provided for the right of victims to obtain reparation and compensation. She asked whether the State party's legislation covered all forms of reparation, such as restitution, rehabilitation, satisfaction and guarantees of non-repetition. She also enquired about concrete steps taken to ensure that victims received prompt, fair and adequate compensation.

8. Referring to paragraph 79 of the replies to the list of issues, she requested clarification of the link between criminal court proceedings and civil claims for

compensation. How could a victim request compensation that was prompt, fair and adequate? She also wished to know what type of assistance could be provided to the families of persons who were missing as a result of an alleged act of enforced disappearance. In particular, given the influx of asylum seekers, mostly from conflict situations, she would like to hear whether the State party had identified families who were victims of enforced disappearance as defined in the Convention, for instance, where family members had disappeared. What kind of psychological or financial support was provided in such cases?

9. The State party had failed to include a specific provision in its legislation reflecting article 25 of the Convention concerning the situation of child victims of enforced disappearance. Mention was made in paragraph 89 of the replies to the list of issues of sections 302, 195, 223, 224 and 229 of the Criminal Code, but the protection provided in those sections did not cover enforced disappearances.

10. Referring to cases of adoption of children that had originated in an enforced disappearance, she asked whether such adoptions could be annulled under the State party's legislation. Lastly, she requested information on measures taken to ensure that the best interests of children and their right to express their views were taken into account.

11. **Ms. Kolaković-Bojović** asked whether the training courses for judges and public prosecutors were provided prior to appointment or as in-service training and if they included training on the Convention. Paragraph 132 of the report referred to the possibility for victims to claim compensation under the Civil Code. She asked whether they could present such claims in criminal proceedings, requesting the competent judge to rule on the type or amount of compensation. She also wished to know whether they could obtain urgent compensation or assistance from a special compensation fund.

The meeting was suspended at 10.25 a.m. and resumed at 10.45 a.m.

12. **Mr. Ruscher** (Austria) said that every application for asylum in Austria was placed on record. The application was filed with an official body such as the police force and then, following a brief round of questions, for instance regarding the person's origin and whether offences such as trafficking were involved, the application was forwarded to the Federal Office for Immigration and Asylum for further consideration.

13. The Convention relating to the Status of Refugees, including its article 33 concerning the prohibition of expulsion or refoulement and article 31 concerning protective measures on behalf of refugees who entered the country unlawfully, was enshrined in domestic legislation. In addition, article 3 of the European Convention on Human Rights, which prohibited inhuman and degrading treatment, had acquired constitutional status in Austria. Complaints could thus be referred to the Constitutional Court and ultimately to the European Court of Human Rights.

14. If an official failed to register an asylum seeker and to forward the application to the competent authority, punitive action could be taken. Disciplinary measures could be adopted or proceedings might be instituted for abuse of authority. Sanctions could include dismissal from the official's post.

15. With regard to detainees' right to legal assistance, all persons arrested by the police were entitled to communicate without delay with a private person of confidence and, if they had no lawyer, to phone the legal counsel service, which was accessible at all times. Additional legal assistance during police custody was not automatically available but would be provided as soon as judicial proceedings were instituted. Access to a legal expert was guaranteed virtually throughout the asylum procedure and was mandatory for unaccompanied minors. An unaccompanied minor could not be questioned without the presence of a legal representative. Asylum seekers could contact the Office of the United Nations High Commissioner for Refugees (UNHCR) at any time and UNHCR could also contact asylum seekers and consult their files.

16. Employees of the Federal Office for Immigration and Asylum were required to undertake specific training in the form of seminars conducted mostly by external experts. Police officers, meanwhile, had to complete a two-year mandatory basic course before they could begin duty. The training, which included a theoretical and a practical component, had

been changed extensively in 2017 to make human rights a cross-cutting issue rather than the topic of a stand-alone module, as had previously been the case. Training programmes for police middle managers had also been adapted to incorporate a human rights focus, and trainers had been schooled in human rights and pedagogical methods.

17. The Government had learned a lot during the height of the European migrant crisis in 2015 and had accordingly decided to expand the capacity of the national asylum authorities. The total number of staff members had been increased from 500 to around 1,500. It was expected to take six months for the new recruits to be sufficiently trained.

18. Paragraph 24 of the Code of Police Practice placed an obligation on law enforcement officials to investigate the whereabouts of missing persons and to take appropriate measures in the case of persons considered to be a danger to themselves or others. A centralized system was used to coordinate the police response to missing person reports. Trained psychologists and psychotherapists were on hand to assist first responders in dealing with trauma victims, including victims of enforced disappearance.

19. **Ms. Pampalk-Lorbeer** (Austria) said that a public official who failed to report or provide information on an ongoing case of enforced disappearance could be charged under chapter II of the Criminal Code with participation in the offence through concealment of the disappeared person's whereabouts or through aiding and abetting in the form of encouragement or endorsement. If the criminal conduct had ceased, and the official had learned about it only after the fact, he or she could still be charged with abuse of official authority, which carried a maximum penalty of 5 years' imprisonment. There were specific provisions in the Criminal Code addressing the liability of superiors who failed to report cases of enforced disappearance that constituted a crime against humanity.

20. Regulations on the use of force by law enforcement officials were being revised in response to a study conducted by the University of Vienna into police brutality. In 2016, the prosecution authorities had received almost 500 complaints of police brutality, around 20 of which had led to the bringing of formal charges. The majority of the complaints had related to the use of handcuffs or pepper spray. The authorities also had a duty to investigate allegations of mistreatment by prison officials. There had been 66 such complaints in 2016.

21. The European Arrest Warrant was a simplified cross-border judicial surrender procedure used for the purpose of prosecuting or executing a custodial sentence or detention order. A warrant issued by one European Union country's judicial authority was valid in the entire territory of the European Union. The Warrant had been operational since 1 January 2004 and had replaced the lengthy extradition procedures that used to exist between European Union countries. Among the advantages of the Warrant were that it set a strict time limit for the country receiving a request to make a final decision on execution and that, for 32 categories of offences, including deprivation of liberty and, by extension, enforced disappearance, there was no need for a double criminality check.

22. "Extradition asylum" was a concept associated with article 13 (7) of the Convention and was granted pursuant to section 19 (3) of the Extradition and Mutual Assistance Act in cases where there was reason to suspect that the person to be extradited would be subjected to prosecution in the requesting State because of his or her origin, race, religion, affiliation to a specific ethnic or social group, nationality or political opinions, or could expect other serious prejudices for any of those reasons. Extradition requests might also be rejected if the criminal proceedings in the requesting State would not or did not comply with articles 3 or 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, or if the punishment to be handed down would be enforced in a manner that was not consistent with article 3. The Extradition and Mutual Assistance Act provided the basis for all extraditions, including to States that had not ratified the International Convention for the Protection of All Persons from Enforced Disappearance. For an extradition request to be valid, it had to concern a crime that carried a maximum penalty of at least 1 year's imprisonment. The Government had done its part to combat enforced disappearance by ratifying the International Convention; it was incumbent on non-ratifying States to provide the necessary cooperation in that regard.

23. As to the complaint of attempted enforced disappearance in Iraq in 2015 that had fallen under Austrian jurisdiction because both the alleged perpetrator and the alleged

victim had been residing in Austria at the time of the complaint, the Government had not submitted a request to Iraq for mutual legal assistance. The case had been investigated by the Regional Office for the Protection of the Constitution and the Fight against Terrorism and had been closed owing to a lack of evidence. A second investigation had been launched, and promptly closed, after the complainant had been accused of providing false testimony.

24. The legal counsel service, available 24 hours a day, which had been introduced at the beginning of 2017, had been used 1,650 times in its first year. If a detainee did not have the means to pay for representation, the costs were borne by the Ministry of Justice, which was currently spending in the region of €80,000 a month on lawyers' fees. The eligibility of a detainee for free legal aid was determined by a court. All detainees with foreign citizenship were entitled to contact their country's consulate immediately.

25. Judges and prosecutors in Austria were required to hold a law degree and to have undergone at least four years of additional, postgraduate training. Courses dealt in detail with human rights issues, including deprivation of liberty. Although there was no specific module on enforced disappearance, legal provisions on the offence were studied thoroughly. Prison officials too received basic and advanced training on human rights and international law, although there was no specific training on the Convention.

26. Section 5 of the Criminal Code enshrined the principle of *dolus eventualis*, according to which, to prove criminal intent, it was sufficient to demonstrate that the accused had foreseen the possibility of his or her conduct breaking the law and had persisted regardless of the consequences. That principle, which applied to the crime of enforced disappearance, therefore established a low threshold for proving intent.

27. The word "damage" in section 65 (1) (c) of the Code of Criminal Procedure covered any and all material and immaterial damages resulting from the commission of a crime, including physical and psychological pain and suffering. Victims in criminal proceedings had the right to claim compensation and to free legal aid if necessary. Victims under section 65 (1) (a) and (b) of the Code were also entitled to psychological assistance. Police officers and prosecutors had a duty to inform all victims of their rights.

28. To obviate the need for victims to claim compensation through civil lawsuits, judges who handed down criminal convictions were required to stipulate the amount of compensation owed by offenders to their victims. In the event of an acquittal, a victim had to go through civil channels in order to claim compensation. Should the judge not be in a position to set an amount, she or he could refer the case to the appropriate civil court. In addition, victims of an intentional offence punishable by a prison sentence of at least 6 months — thus including enforced disappearance — also had access to other types of assistance, including rehabilitation, therapy and additional financial assistance, through the Ministry of Social Affairs. Lastly, as set out in paragraph 89 of the State party's replies, the Austrian Criminal Code was fully in line with article 25 of the Convention.

29. **Ms. Walser** (Austria), responding to questions about the electronically managed Integrated Administration of the Penitentiary System, said that prison officials were responsible for entering all relevant information about a person deprived of her or his liberty, and a photo was also saved in the inmate's file. New prison officials were immediately given training on how to use the system. According to an internal regulation, dating back to 2000, when the system had first been set up, if new inmates arrived during the night shift, when there were fewer officers on duty, they could be registered the next day; although that regulation was still in force, new arrivals were usually registered immediately, even during the night shift. The complaint that had been received concerning improper registration concerned an officer who, having registered an inmate upon arrival, then searched the files for private information on the person, which was clearly an abuse of office and therefore unlawful.

30. Under civil law, if the consent of a parent to adoption had been obtained by fraud or threat, or if the child's well-being was at risk, the adoption could be annulled. Children had the right to be heard in person and could participate in legal proceedings depending on their age: provision was made for children between the ages of 10 and 16 years to speak with expert witnesses and a psychologist; for children younger than 10, a child welfare worker

was often involved and would be the judge of whether participation in the proceedings would negatively affect the child.

31. **Mr. Figallo Rivadeneyra** said that the State party had clearly taken a number of measures aimed at preventing the return of a person to another State where there were substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. However, legislation alone was not sufficient; such preventive measures must be applied in practice. He welcomed the positive practices of the State party in terms of the provision of legal defence and assistance. As for the registration of persons deprived of their liberty, he wished to point out that, while there could be many banal reasons for failure to register a new inmate, such failure could, in some cases, be linked to a risk of enforced disappearance. It was therefore important to continue monitoring such registration.

32. **Ms. Janina** said that she would like further information about the list of countries of origin considered as "safe" under Austrian law in an asylum procedure, including how persons from those countries were protected against the risk of enforced disappearance and whether they had the right to appeal a decision rejecting their application for asylum. In addition, she wondered how the fact that relatives of a person deprived of her or his liberty, but who were not legal representatives of that person, had no right to inspect the prison files could be considered consistent with article 18 of the Convention.

33. Turning to article 24 of the Convention, she said that it would be interesting to learn whether there was a State fund for compensating victims of crimes committed by State officials, if the official specifically convicted of such a crime was not in a position to pay compensation directly and immediately to the victim. She would welcome more detailed information about the Integrated Administration of the Penitentiary System, including which authorities were responsible for gathering information from all the prisons, how secure the system was, and whether all the information provided for in article 17 of the Convention was contained in the system. Lastly, the Committee would be grateful for the translation of the articles mentioned by the delegation regarding the fulfilment of the rights of children under article 25 of the Convention.

34. **Mr. Ayat** said that he would be interested to learn how the State party sought to insure against abuses in cases of involuntary hospitalization of mentally ill persons; specifically, it would be useful to know whether such hospitalization must necessarily be ordered by a judge and how it was monitored once in place. He would also welcome further information on the specific circumstances under which hospitalization beyond the three-month maximum period could be extended.

35. Commending the State party for the "Babynest" initiative designed for pregnant women in emergency situations, he said he would like to know how long children could remain in the care of a given youth welfare organization and under what conditions a child could be returned to her or his biological mother or, alternatively, put up for adoption.

36. **Mr. Ruscher** (Austria), responding to a request for statistical data on asylum seekers, said that approximately 28,000 asylum applications had been received and processed in 2014, with the number rising to 88,300 in 2015 before falling to 42,300 in 2016 and to 24,300 in 2017. The figures for 2017 were not yet definitive as a final decision had yet to be taken in some cases and some asylum applications had since been withdrawn.

37. A person subject to extradition who believed the principle non-refoulement to have been violated could appeal or request a judicial review of the decision prior to the measure being implemented or, failing that, upon arrival in the requesting State. It was likewise unlawful for a police officer to refuse or to fail to act on a request from a third-country national for assistance in obtaining international protection or in applying for asylum. Such conduct normally triggered disciplinary proceedings and the offending officer could be sentenced to up to 5 years in prison and lose his or her job and right to a retirement pension as a result.

38. Despite there being a list of countries of origin considered to be "safe", due consideration was still given to asylum applications submitted by nationals of those countries. However, in such cases, the authorities would, in all likelihood, conclude that the

person would not face persecution in his or her country of origin upon return there. Asylum seekers from "safe" countries were routinely interviewed about their reasons for having left their country of origin and for having travelled to Austria. If their asylum application was refused, they could of course appeal or request a judicial review of the decision. However, if the courts decided not to grant the appeal with suspensive effect, they would most likely have to await the final decision outside Austria.

39. The right of family members to be informed of a relative's arrest was guaranteed through the meticulous recording of the relevant details in an electronic database, which was accessible to all law enforcement officials. If an arrested person declined to contact his or her family and they subsequently reported him or her missing, the police would search for the person's name in the database and would easily be able to confirm that he or she was in police custody. Arresting and depriving offenders of their liberty was an integral part of police work and, provided that there were sufficient legal grounds for doing so, could not be considered to amount to enforced disappearance.

40. Although there was no dedicated compensation fund for persons who had suffered damages as a result of the abuse of authority by a public official, the Public Liability Act clearly provided that the State had an obligation to provide victims with adequate compensation and reparation on the public official's behalf. Public officials were not held individually liable for the payment of compensation as any inability to pay on their part would penalize the victim.

41. Persons suffering from a mental condition who were judged to be a danger to themselves and to others could be placed in a psychiatric clinic or hospital for treatment, provided that authorization was obtained from an expert physician. If confinement was deemed to be the most appropriate course of action, the courts were informed and a judicial review could be conducted to establish whether the measure was lawful and justifiable.

42. **Ms. Walser** (Austria) said that the details of persons under arrest, in pretrial detention and serving a prison sentence recorded in the electronic database also existed in hard copy, thus ensuring that the information remained accessible in the event of a system failure. The electronic database was maintained by the Austrian Federal Computing Centre, which adhered to the highest information security and data protection standards. Access to the electronic database, which also contained court rulings and physicians' notes, was restricted. For example, prison officers could only access information on inmates under their direct care.

43. Involuntary confinement could be imposed as a forensic measure, or as a penalty by virtue of a court decision. Persons could be confined to a hospital, a specialized medical institution or a special unit within a penal institution. The staff working in those institutions underwent mandatory training and were required to adhere to high standards of care. A pilot project to facilitate communication between inmates who did not speak adequate German and medical personnel, through the provision of remote interpretation services, had been launched in 2017 and had since been rolled out to a greater number of penal institutions. Confined persons could likewise speak to medical personnel through an interpreter via a video link.

44. **Ms. Pampalk-Lorbeer** (Austria) said that section 77 of the Code of Criminal Procedure provided that any person with a legitimate legal interest could enjoy full access to the records of investigation and trial proceedings, insofar as doing so did not conflict with overwhelming public or private interests. Certain documents could, however, be redacted if required.

45. In criminal proceedings, it fell to the individual perpetrator of the crime, who did not need to be a public official, to pay compensation to the victim. The delegation was not currently in a position to answer the question posed on the Babynest initiative and would submit a written response to the Committee within 48 hours.

46. **Ms. Janina** thanked the delegation for the fruitful and constructive dialogue and said that the Committee was grateful for the diligence that the State party had demonstrated in meeting its reporting obligations throughout the cycle and for its willingness to respond to the many questions posed by the members of the Committee. The State party was also to

be commended for having recognized the competence of the Committee to receive and consider communications under articles 31 and 32 of the Convention, despite no cases of enforced disappearance having been recorded in its national territory. She trusted that it would make every effort to disseminate the Convention and the Committee's concluding observations widely among all relevant stakeholders, particularly non-governmental organizations, legal associations and law enforcement agencies, and to involve civil society in any future initiatives relevant to the Convention.

47. **Mr. Tichy** (Austria) thanked the Committee for the enlightening dialogue. There was undoubtedly a need to raise awareness in the State party of the Convention and its relevance to Austria; to that end, a copy of the Committee's concluding observations would be distributed to the Human Rights Advisory Council and to those participating in the annual conference for international lawyers.

48. **The Chair** said that the importance that the State party attached to fulfilling its obligations under the Convention, despite no cases of enforced disappearance having been recorded in its national territory, and its willingness to submit to the Committee's scrutiny, were heartening. Its decision to ratify the Convention could set a much needed example to other countries in Europe, where the number of ratifications remained conspicuously low.

The meeting rose at 12.30 p.m.

United Nations CED/C/SR.243

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
5 June 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 243rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 24 May 2018, at 3 p.m.

Chair: Ms. Galvis Patiño (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Albania

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08506 (E) 040618 050618

1808506

Please recycle

In the absence of Ms. Janina, Ms. Galvis Patiño, Vice-Chair, took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Albania (CED/C/ALB/1; CED/C/ALB/Q/1 and CED/C/ALB/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Albania took places at the Committee table.*

2. **Ms. Dralo** (Albania), introducing the initial report of Albania (CED/C/ALB/1), said that her Government recognized the importance of the Convention for promoting and protecting human rights and welcomed the constructive dialogue as an opportunity to renew its commitment to combating enforced disappearance. Albania had ratified all core United Nations human rights treaties, as well as Council of Europe instruments, and abided by the requirements set out in those texts. As a member of the Human Rights Council from 2015 to 2017, Albania had actively contributed to the deliberations of that body and to its efforts to promote and protect human rights. The Government recognized the challenge posed by the rise of violent extremism and non-State armed groups and reaffirmed its commitment to combating rights violations. In the context of those efforts, it was developing a mechanism that would allow government institutions to better monitor progress in the implementation of treaty body recommendations, and it looked forward to receiving the Committee's guidance in order to strengthen and improve its legal framework.

3. The Constitution of Albania enshrined fundamental rights and safeguards for the benefit of all citizens, including provisions on the protection of life, equality before the law and non-discrimination, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and political, economic and social rights. Independent institutions charged with protecting human rights included the Constitutional Court, the General Prosecution Office, the Ombudsman's Office and the Office of the Commissioner for Protection against Discrimination. The Government was implementing justice reform with a view to strengthening the judiciary and the rule of law and consolidating democracy, and had taken several steps to meet its obligations under the Convention. Under Act No. 144/2013, the Criminal Code had been amended to include articles categorizing enforced disappearance as a specific criminal offence and, in some cases, as a crime against humanity, along with provisions on the criminal responsibility of superiors, penalties and aggravating circumstances. The Criminal Code therefore provided an appropriate and comprehensive legal framework for preventing acts of enforced disappearance. Moreover, on 1 January 2018, a new Juvenile Justice Code had entered into force; it contained special provisions on juvenile delinquency and procedural rules regarding investigation, prosecution, sentence enforcement, rehabilitation and other measures involving juveniles in conflict with the law.

4. The Constitution, the Code of Criminal Procedure and the State Police Act together defined and guaranteed the legal rights of persons deprived of their liberty. Respect for and protection of human rights was one of the priorities of the State Police, whose officers followed standard procedures that had been developed for the treatment and security of persons detained in its facilities and for addressing their requests or complaints. No cases of enforced disappearance had been reported in the State party during the reporting period. Albania had no secret detention facilities: citizens, aliens or stateless persons arrested by the criminal investigation service were held on State Police premises until further measures were decided by a court. Such premises were visited and inspected by the Ombudsman's Office, human rights organizations and the prosecution authority. As noted in the replies to the list of issues (CED/C/ALB/Q/1/Add.1), the State Police had created an electronic registry system for the entry of data on escorted, arrested and detained persons, which had been operational in local police units since 2010. Under Albanian law, persons deprived of their liberty received a written statement detailing their rights. The General Directorate of State Police continually monitored its employees to ensure that they discharged their duties in accordance with the law and did not use physical force, psychological violence or other forms of ill-treatment in order to obtain information or confessions. Police personnel were

required to attend annual training that covered lawful and unlawful conduct and fundamental human rights, such as the right to counsel. Between 2015 and 2018, 55 training workshops had been carried out for 891 State Police officers and employees. Thanks to legislative improvements, the introduction of community policing and a rise in the number of female police officers, progress had been achieved in changing mindsets within the State Police. The Government recognized the importance of continuing to implement the vetting process that was under way and of upgrading infrastructure and equipment so as to offer better working conditions for law enforcement officers and better conditions of detention for persons deprived of their liberty.

5. The ratification of international instruments and the alignment of legislation with European Union law had laid the foundation for an open, transparent and accountable prison system that fulfilled the Government's obligations under the Convention. The Rights and Treatment of Prisoners Act emphasized fundamental rights, rehabilitation and security in prisons. Albania had 23 penitentiaries, whose addresses and contact details were publicly available. As at 20 May 2018, there were 5,757 convicts and pretrial detainees in the prison system. Although the prison population was 6 per cent higher than official capacity, the rate of overcrowding was lower than in previous years. Prison regulations stipulated that pretrial detainees and convicts alike should be treated with dignity and without discrimination. The General Directorate of Prisons administered data concerning the number of inmates and pretrial detainees in each prison, personal details and dates of admission, release, extradition or transfer. Administrative rules and procedures on record-keeping and personal data protection had been improved; the General Directorate of Prisons carried out inspections to ensure that prisoner records were complete, and no cases of non-registration of persons deprived of their liberty had been detected during the reporting period. Non-governmental organizations (NGOs) and the Ombudsman's Office were allowed to conduct visits and inspections at any time, to see relevant documents and to talk to inmates without the presence of police officers. They also participated in initiatives such as the programme on the prevention of torture and violence in the prison system developed by the Albanian Rehabilitation Centre for Trauma and Torture. In 2017, the Ombudsman's Office had forwarded 68 recommendations and requests for information to the General Directorate of Prisons, of which 53 per cent had been implemented and 20 per cent were in the process of being implemented. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had carried out a monitoring visit in February 2017 and had made 20 recommendations for the improvement of prisoner treatment and conditions of detention, leading to the adoption of an action plan in January 2018. During the reporting period, the Government had implemented vetting and capacity-building for prison staff as part of its drive to bring the prison system into line with European Union standards. Accordingly, from 2017 to April 2018, 1,454 prison staff had received in-service training in areas such as communication skills, prevention of discrimination, treatment of persons with mental health problems and treatment of drug users.

6. During the period of communist rule (1944–1991), a large number of prisoners had been executed or had disappeared in unknown circumstances. Consequently, the Government and the International Commission on Missing Persons were drafting a cooperation agreement designed to protect the rights of family members of persons who had gone missing during that period, to locate the missing persons and to establish the truth about their disappearance. Pursuant to Act No. 45/2015, the Authority for Information on Former State Security Documents had been assigned responsibility for collecting, assessing, sorting, recording, maintaining and administering the documents of the former Directorate of State Security. It also cooperated with public authorities and archives, provided information on documents to individuals, institutions and other stakeholders and supported scientific and historical research on the activities of the former Directorate of State Security. Its main duty was to ascertain the fate of deceased or disappeared individuals, based on records referring to the place and time of imprisonment, execution or burial, or to the personnel involved, and on lists of victims and other data. It had received a total of 483 requests, 41 of which had asked for clarification of the fate of disappeared individuals. The Authority gave priority to information requests for the purposes of rehabilitation, compensation, criminal investigation and prosecution or avoidance of possible dismissal owing to charges of cooperation with the former Directorate of State

Security, while respecting the applicable legislation on personal data protection. It had also approved the implementation of a project for the national remembrance of forced labour camps and had constructed a memorial at the Tepelenë camp by converting one of the ruined buildings and planting seedlings to commemorate the children who had lost their lives there. Despite the analysis and processing of relevant documents, no records of executions, death certificates or burial places had yet been found, nor had any perpetrators of enforced disappearance been identified.

7. **Mr. Decaux** (Country Rapporteur), thanking the head of delegation for her detailed introduction of the State party's report, said that the reporting process, which was explained in detail in various documents available on the Committee's website, seemed to have given rise to a number of misunderstandings. The State party's replies to the list of issues (CED/C/ALB/Q/1/Add.1), for instance, had been presented as a second periodic report. In the same document, the article clusters used to structure the Committee's list of issues had been misinterpreted as recommendations. In addition, some of the information submitted was rather general in nature and belonged in the State party's core document. Despite those misunderstandings, he hoped that the constructive dialogue would give the delegation the opportunity to provide any outstanding replies to the questions raised in the Committee's list of issues.

8. He wished to know whether the report under consideration had been prepared through an inter-agency process and whether NGOs, particularly those representing victims' relatives and human rights defenders, had been involved in its preparation. It would be interesting to learn how the activities of the interministerial working group that, in 2000, had been made responsible for the submission of reports to the human rights treaty bodies had been transformed by Order of the Prime Minister No. 112 of 2014. He noted that the Committee had not received any information directly from NGOs working on issues relating to enforced disappearance in the State party.

9. He would be grateful for more specific information on the direct applicability of the Convention and its transposition into national law. For example, it would be useful to learn whether a legislative review had been carried out prior to the ratification of the Convention and whether any implementing legislation had been passed as part of the ratification process. He wondered whether legislative amendments other than the 2013 amendments to the Criminal Code had been introduced to transpose the Convention into national law or whether the direct applicability of each of its provisions would be decided on a case-by-case basis.

10. It would be helpful if the delegation could provide more information on the human rights safeguards implemented during a state of war or emergency. In particular, he wished to know whether fundamental rights and freedoms, including the non-derogability of the prohibition of enforced disappearance, were guaranteed in all circumstances during a state of war or emergency.

11. A number of aspects of the legal framework governing crimes of enforced disappearance, such as the definitions of relevant offences, elements such as complicity and superior responsibility and the applicable penalties, aggravating circumstances and statute of limitations, required further clarification. Article 74 of the Criminal Code, which set out the circumstances in which certain offences constituted crimes against humanity, seemed considerably narrower than the corresponding provisions of the Convention and the Rome Statute of the International Criminal Court. In addition, the penalties provided for under article 109/c of the Criminal Code, which established enforced disappearance as a specific ordinary offence, did not seem commensurate with its seriousness. Given the disparity between the penalties applicable to superiors who bore responsibility for crimes of enforced disappearance and those applicable to the perpetrators of such crimes, he wondered whether elements such as complicity and superior responsibility were systematically taken into account in that context. It was also unclear how the aggravating circumstances provided for in article 109/c were applied alongside the aggravating and mitigating circumstances provided for elsewhere in the Criminal Code and, following the recent amendment of article 66 of the Criminal Code, what term of limitation was currently applicable to the offence of enforced disappearance.

12. With regard to non-State actors, he would be grateful for an explanation of the relationship between the offence of enforced disappearance, as established under article 109/c of the Criminal Code, and other offences established under articles 109, 109/a and 109/b, such as the offence of kidnapping. He noted that article 3 of the Convention required States parties to take appropriate measures to investigate crimes of enforced disappearance committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

13. Lastly, he would appreciate more information on the implementation of the legal framework governing the obligations of subordinates in the context of superior orders and wondered whether subordinates were required to obey a manifestly unlawful order that prescribed, authorized or encouraged enforced disappearance.

14. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that, with regard to the statute of limitations applicable in respect of enforced disappearance, he would be grateful for more information on the State party's compliance with the requirements of article 8 of the Convention. Although explicit reference was made in article 8 to the continuous nature of the offence of enforced disappearance, under article 66 of the Albanian Criminal Code the term of limitation for criminal proceedings in respect of any offence did not commence from the moment when the offence ceased, but from the moment when it was committed. The importance of taking into account the continuous nature of crimes of enforced disappearance had been emphasized in the report of the Working Group on Enforced or Involuntary Disappearances on its 2016 visit to Albania.

15. With regard to disappearances that might have occurred in the period 1944–1991, there was a need to ensure that national legislation was interpreted and applied in accordance with international law and custom. It was likely that the cooperation agreement between the Albanian Government and the International Commission on Missing Persons would result in improved data-collection practices, which would in turn facilitate effective investigations. In that connection, he wished to know whether perpetrators of enforced disappearance, either as an ordinary offence or as a crime against humanity, could be investigated, prosecuted and convicted under Albanian law in cases in which the fate of the victims was unknown, whether any proceedings in respect of enforced disappearance had been brought before the courts, whether any such proceedings were currently open and whether any cases had been found to be time-barred. Examples of relevant case law would also be welcome.

16. With reference to paragraph 9 of the Committee's list of issues (CED/C/ALB/Q/1), he would be grateful for more information on any extradition requests that had been granted or denied. Paragraph 40 of the State party's replies was somewhat contradictory, as it indicated that crimes of enforced disappearance could be prosecuted under Albanian law irrespective of where they had been committed or the nationality of the perpetrator, but also that the applicability of Albanian criminal legislation was determined by the international agreements to which Albania was a party. He would appreciate further details on how matters related to the principles of dual criminality, *aut dedere aut judicare* and universal jurisdiction were resolved under the State party's criminal law. With reference to paragraph 42 of the State party's replies, he asked for clarification of the immunities enjoyed by internationally protected persons under articles 9 and 9/a of the Criminal Code. He would also welcome clarification of paragraph 44 of the replies, which indicated both that the military authorities were responsible for investigating and prosecuting persons accused of the offence of enforced disappearance and that ordinary courts had jurisdiction to try military personnel for that offence.

17. He would be grateful if the delegation could provide the information requested in paragraphs 11 and 12 of the Committee's list of issues, regarding the immediate conduct of investigations, international legal assistance, training of relevant officials and access to places of detention. Lastly, he would appreciate additional information on the legislative provisions under which State officials could be suspended from their posts in connection with their involvement in an enforced disappearance. Although paragraph 50 of the State party's replies to the list of issues contained some information on the legislation applicable specifically to Prison Police officers, it was unclear whether they and other State officials were suspended once they had been declared suspects or once the investigation had begun.

The meeting was suspended at 4.10 p.m. and resumed at 4.30 p.m.

18. **Ms. Peçi** (Albania) said that the process of drafting periodic reports under the various treaties to which Albania was a party was coordinated by the Ministry of Foreign Affairs. The reports were written by a working group consisting of members of the relevant government ministries and a number of independent institutions. Parliament also played an active role in the process by organizing public hearings and inviting other institutions to provide information. NGOs were also invited to participate in the process, in addition to submitting their own shadow reports. Under domestic law, once a report had been finalized, it was published in the Official Gazette. The recommendations of the relevant treaty body were also publicly disseminated. Some difficulties had been encountered in the drafting of the initial report under the Convention due, perhaps, to the fact that the treaty was relatively new.

19. The core document of 2003 (HRI/CORE/1/Add.124) had been updated in 2012 (HRI/CORE/ALB/2012). Albania had NGOs that worked in relevant areas, such as the Albanian Rehabilitation Centre for Trauma and Torture and the Albanian Helsinki Committee, but none that dealt specifically with enforced disappearance. The definition of enforced disappearance in the 2013 Criminal Code incorporated the three main elements referred to in article 2 of the Convention. As a specific offence, enforced disappearance had to involve arrest, detention, abduction or any other form of deprivation of liberty. The act had to be carried out by public officials, State agents or persons acting with the authorization, support or acquiescence of the State. Finally, the act had to be followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.

20. **Ms. Imeraj** (Albania) said that, under article 122 of the Constitution, in the case of a conflict between domestic law and international treaties, the latter had priority. In addition, treaties were directly applicable except when their provisions were not self-executing and their application required the adoption of implementing legislation. Amendments had, in fact, been introduced into national criminal law to bring it into line with the Convention. Furthermore, in accordance with article 5 of the Convention, article 74 of the Criminal Code listed enforced disappearance as a crime against humanity. The statute of limitations set forth in article 66 of the Criminal Code envisaged a limitation of 20 years for offences that attracted a term of imprisonment of more than 10 years, and 10 years for offences that attracted a term of imprisonment of between 5 and 10 years.

21. **Mr. Shtjefni** (Albania) said that the State Police had a pyramidal hierarchical structure, at the top of which was the General Director of Albanian State Police. Neither the General Director nor any other senior law enforcement official could issue an order to commit acts of enforced disappearance. In fact, all orders had to be issued in written form and had to include the legal grounds that justified them. Thus, subordinates were always aware of the legal provisions underpinning the orders they were following.

22. **Ms. Dralo** (Albania) said that the purpose of parliamentary public hearings was not only to involve representatives of different institutions but also to reach out to civil society and the public at large, inter alia for the purpose of obtaining information that could be helpful for specific investigations. The hearings were also helping to establish a clearer picture of events during the period 1944–1991.

23. **Mr. Decaux** said that he wished to commend the State party for promoting transparency through its consultative processes, particularly the public hearings before Parliament and the publication of reports and recommendations in the Official Gazette. In its report on its 2016 visit to the country (A/HRC/36/39/Add.1), the Working Group on Enforced or Involuntary Disappearances expressed concerns about "inadequate knowledge of essential precepts of the Convention, related, inter alia, to the nature of State obligations, the continuous character of the crime of enforced disappearance, and the concept of a victim of enforced disappearance". It was important to provide legal professionals with appropriate training in those fields, particularly in the light of the complexity of the Convention. In that regard, it would be interesting to know whether all the innovative elements of the Convention, such as those contained in articles 24 and 25, had been transposed into domestic law.

24. Although article 74 of the Criminal Code listed enforced disappearance as a potential crime against humanity, the precise circumstances and elements that had to be present in order for it to be considered as such were not clear or easy to interpret. By contrast, article 5 of the Convention made specific reference to applicable international law, one of the cornerstones of which was the Rome Statute, where the elements of crimes against humanity, including enforced disappearance, were much more clearly defined.

25. Although article 2 of the Convention was accommodated in article 109/c of the Criminal Code, he would be interested to know whether provision was also made for other parts of the Convention, notably article 6, which enjoined States to hold persons criminally responsible if they ordered, solicited, induced, attempted to commit or participated in an enforced disappearance. Also with reference to article 6 of the Convention, what provisions existed in domestic law to ensure that superiors and persons in authority, whether civilian or military, were duly held to account for involvement in cases of enforced disappearance?

26. **Mr. Figallo Rivadeneyra** said that focusing on specific legal provisions in isolation could sometimes be misleading, and it was important to have a holistic view of a comprehensive body of legislation. For example, in considering the statute of limitations in article 66 of the Criminal Code, it was important to distinguish between instantaneous offences, continuing offences and continuous offences such as enforced disappearance, where the single act of abduction was instantaneous but its effects were prolonged over time. Perhaps the particular nature of enforced disappearance could be addressed under other provisions of domestic law, taking due account of article 8 of the Convention.

27. **Mr. Teraya** said that he wished to know exactly which parts of the Convention were directly applicable in domestic law under article 122 of the Constitution.

28. **Ms. Peçi** (Albania) said that the Convention was considered to be applied directly when domestic laws that were fully in line with the Convention were duly enforced.

The meeting rose at 5.05 p.m.

United Nations CED/C/SR.244

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
5 June 2018

Original: English

Committee on Enforced Disappearances
Fourteenth session

Summary record of the 244th meeting
Held at the Palais Wilson, Geneva, on Friday, 25 May 2018, at 10 a.m.

Chair: Mr. Ayat (Vice-Chair)

Contents

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Albania (*continued*)

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.

GE.18-08544 (E) 050618 050618

1808544

Please recycle

In the absence of Ms. Janina, Mr. Ayat, Vice-Chair, took the Chair.

The meeting was called to order at 10.10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Albania (*continued*) (CED/C/ALB/1; CED/C/ALB/Q/1 and CED/C/ALB/Q/1/Add.1)

1. *At the invitation of the Chair, the delegation of Albania took places at the Committee table.*

2. **Ms. Dralo** (Albania), replying to questions raised at the preceding meeting of the Committee, said that non-governmental human rights organizations had been invited to contribute to the process of drafting the initial report (CED/C/ALB/1), pursuant to Order of the Prime Minister No. 112 of 2014. Although there were no civil society organizations in Albania operating in the specific areas covered by the Convention, such organizations were generally well informed about the obligations arising from the ratification of the Convention, which had been published in the Official Gazette. The report had been adopted by a decision of the Council of Ministers and was available in Albanian on the website of the Official Publication Centre. The parliamentary committee that dealt with human rights played a key role in organizing public discussions on the implementation of the Convention with the participation of relevant stakeholders. In 2016, the Government had begun to develop a mechanism to monitor the implementation of recommendations issued by the human rights treaty bodies; the mechanism was expected to be operational later in 2018.

3. Regarding the status of the Convention in domestic legislation, article 4 of the Constitution provided that the Constitution was the highest law in Albania and that its provisions were directly applicable, except when the Constitution provided otherwise. Under article 5, Albania applied international law that was binding upon it; under article 122, any ratified international agreement constituted part of the internal legal system once it had been published in the Official Gazette and was directly applicable, except when it was not self-executing and its application required the adoption of implementing legislation. A duly ratified international agreement had priority over domestic laws that were incompatible with it. The norms issued by an international organization had priority, in case of conflict, over domestic law when the direct application of such norms was expressly contemplated in the agreement ratified by Albania. Consequently, the Convention was considered to be part of domestic law, but since not all of its provisions were self-executing, existing national laws would have to be amended and new ones adopted in order to give full effect to it. Article 1/a of the Criminal Code provided that the Code was based on the Constitution, the general principles of international criminal law and the international treaties ratified by Albania. The compatibility of domestic laws with the Convention had not been fully analysed prior to the latter's ratification. The involvement of all stakeholders was crucial for ensuring that an analysis was conducted and that the necessary steps were taken to harmonize domestic legislation with the Convention.

4. The extraordinary measures mentioned in paragraph 45 (b) of the initial report could be imposed in the event of a war, emergency or natural disaster, and lasted for as long as those conditions persisted. The extent to which human rights and freedoms could be restricted by such measures was defined by law. Any actions taken under extraordinary measures had to be proportionate to the degree of risk and had to be aimed at restoring the normal functioning of the State as soon as possible. Pursuant to article 15 of the Constitution, fundamental human rights and freedoms were indivisible, inalienable and inviolable, and formed the foundation of the entire juridical order. Article 16 provided that the fundamental rights and freedoms and the duties contemplated in the Constitution for Albanian citizens were also valid for foreigners and stateless persons in the territory of Albania, except in cases where the Constitution specifically attached the exercise of particular rights and freedoms to Albanian citizenship. Article 17 stipulated that limitations of the rights and freedoms provided for in the Constitution could be imposed only by law, in the public interest or for the protection of the rights of others. Limitations had to be proportionate to the situation that dictated them and could not infringe the essence of the rights and freedoms or exceed the limitations provided for in the European Convention on

Human Rights. Pursuant to article 27, no one could be deprived of liberty except in the cases listed in paragraph 2 thereof.

5. In Albania, there was no law on states of war or internal political instability that provided for or justified the violation of the rights of persons who were detained or arrested. In those situations, the legislation normally in force continued to apply. Article 4 (3) of Act No. 108/2015 on the State Police specified that the status of the police did not change in times of war, emergency or natural disaster. According to the Act, which set out measures designed to maintain public order and security, respect for human rights and fundamental freedoms was one of the basic principles underpinning police work. Article 230 of the Code of Criminal Procedure laid down special criteria for the issuance of orders for remand in custody, while article 230 of the Criminal Code stated that the commission of terrorist acts was punishable by no less than 15 years' imprisonment. According to domestic law, investigation procedures were the same for all criminal offences.

6. Article 74 of the Criminal Code provided that enforced disappearance, among other offences, was a crime against humanity punishable by no less than 15 years' imprisonment when it was committed according to a concrete premeditated plan or systematically against a civilian population for political, ideological, racial, ethnic or religious motives. The provision was in line with article 5 of the Convention and article 7 of the Rome Statute of the International Criminal Court.

7. Turning to article 3 of the Convention, she drew the Committee's attention to the information provided in paragraphs 53 and 54 (a) of the initial report. The responsibility of superiors for acts of enforced disappearance was addressed in article 109/c of the Criminal Code. Articles 248 ff. of the Code covered criminal acts against the State committed by public officials, including the arbitrary issuance of orders and the failure to take measures to stop an illegal activity. Subordinates were not required to execute an order that was contrary to the law. If a subordinate suspected that an order was unlawful, he or she was expected to notify a superior immediately and ask for the order to be given in writing. Each State body's procedures for issuing, transmitting and handling orders were defined in its regulations.

8. Under criminal legislation, enforced disappearance was treated as a continuous crime. Pursuant to article 66 (a) of the Criminal Code, the statute of limitations was calculated from the moment when the offence was committed until the moment when the accused was detained, and was 20 years in the case of the most serious crimes, including enforced disappearance. The maximum penalty for enforced disappearance without aggravating circumstances was 15 years' imprisonment. However, in accordance with article 7 (2) (b) of the Convention, article 109/c of the Criminal Code established aggravating circumstances, including the commission of the crime in respect of children, pregnant women or persons who were unable to protect themselves. When the crime resulted in the death of the disappeared person, it was punishable by no less than 30 years' imprisonment. Article 50 of the Criminal Code provided for aggravating circumstances that were applicable to all offences.

9. Between January 2017 and April 2018, training had been provided to 1,454 prison officials of various ranks. Numerous systematic and in-service programmes were offered. The subjects covered in the training curriculum included the obligations undertaken by Albania under international instruments and the European Prison Rules. Programmes for officials working with minors and women, continuing training and career development training contained modules on legislation, security and service policies, cultural diversity and the prevention of discrimination, professional ethics and communication, and conflict management.

10. Pursuant to Act No. 108/2015 on the State Police, all officers were given mandatory annual training on the protection of the fundamental rights of persons deprived of their liberty, including the right to be represented by a lawyer of their choice. Since 2015, 55 training workshops had been held with the participation of 891 State Police officers.

11. **Mr. Figallo Rivadeneyra** (Country Rapporteur) said that the Committee would appreciate additional information on the progress made towards establishing the Disappeared Persons Section within the Institute for Integration of Former Politically

Persecuted. He commended the State party for having adopted legislation that reflected its obligation not to return, extradite or expel from its territory asylum seekers from countries where there were grounds for believing that such persons would be in danger of being subjected to enforced disappearance; it would be useful to learn more about the application of such legislation and whether any good practices had been identified thus far. It would also be interesting to hear whether it was possible to appeal a decision on expulsion, return, surrender or extradition and, if so, whether such appeals had suspensive effect.

12. He would be grateful for detailed information on the provision of legal assistance, including free legal assistance for persons with few or no resources of their own. Statistics on any claims of unlawful detention that had been brought before the courts, together with the decisions handed down and any reparations provided, would also be appreciated.

13. **Mr. Decaux** (Country Rapporteur) said that the Committee remained concerned at the lack of a definition of the term "victim" in the State party's legislation. Such a definition would allow disappeared persons and others who had suffered harm as the direct result of an enforced disappearance to invoke their rights under the Convention and domestic law. He further noted that there was no victims' association in Albania and drew attention to article 24 (7), on the right to form and participate freely in such associations, which helped to combat impunity. The State party's replies to the Committee's question in paragraph 23 of the list of issues were somewhat narrow, insofar as they focused on compensation, whereas article 24 (5) of the Convention set out a broad range of types of reparation, in line with General Assembly resolution 60/147. Such other forms of reparation went beyond compensation and were beneficial to society as a whole. It would be interesting to learn whether other forms of reparation were reflected in the State party's law and practice.

14. Noting that the State party's replies to the Committee's question in paragraph 24 of the list of issues referred mainly to social protection measures, he said that the Committee would like to know more specifically about the legal and technical measures taken to search for and identify child victims, including through the use of a DNA database.

The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.

15. **Ms. Peçi** (Albania) said that the Disappeared Persons Section had been established within the Institute for Integration of Former Politically Persecuted by an order of the Prime Minister issued in October 2014; it was now operational and reported to the Ministry of Health and Social Protection. Its objectives were those set out in paragraph 41 of the initial report (CED/C/ALB/1).

16. The aim of the draft cooperation agreement between the Albanian Government and the International Commission on Missing Persons was to protect the rights of family members of persons who had disappeared during the communist period in Albania. It was a comprehensive agreement that focused on the search for and collection of information on missing and disappeared persons, including through the use of a DNA database. The Government hoped to adopt the agreement shortly.

17. **Ms. Imeraj** (Albania) said that her Government, after ratifying the Convention, had introduced necessary amendments to its domestic law. It had then created specific sections within institutions relevant to the Convention and had provided theoretical and practical training to all the officials of those institutions in order to ensure that the Convention and related laws were properly understood and applied.

18. Under the Code of Criminal Procedure, any person arrested or detained was entitled, from the moment of arrest or detention, to hire the lawyer of her or his choosing or to be provided with one free of charge if she or he had insufficient resources. In the latter situation, a lawyer was chosen from an official list provided by the Albanian Chamber of Lawyers to all competent institutions. The Constitution, the Code of Criminal Procedure and the 2014 State Police Act together defined the rights of persons deprived of their liberty. In 2017, several legislative amendments had been adopted concerning the rights of persons arrested or detained, including the right of immediate access to a lawyer.

19. The absence of a specific definition of the term "victim" in the criminal legislation of Albania had not prevented the authorities from effectively supporting the rights of

victims. In 2017 the Code of Criminal Procedure had been amended to include a detailed description of victims' rights.

20. **Mr. Dervishaj** (Albania) said that since his Government's ratification of the Convention, there had been no cases of enforced disappearance of children; therefore, no national DNA database had been created within the State Police forensic institution. However, should cases arise in the future, Albania had the legal framework and technical capacity to carry out the necessary research and analysis of related data.

21. **Mr. Decaux** said that he was grateful for the information on the recent amendments to the Code of Criminal Procedure intended to guarantee victims' rights. It would be helpful if the delegation could submit a copy of the relevant provisions to the Committee for closer examination.

22. **Mr. Figallo Rivadeneyra** asked whether, as part of its efforts to deal with the legacy of the communist regime, the State party planned to use recently declassified information to establish the extent of the involvement of members of the security forces in cases of enforced disappearance and to launch criminal investigations, where applicable. He said that he also wished to know whether the State party intended to use that information to bring perpetrators of crimes against humanity to justice, even though such crimes were time-barred. The delegation could submit information in writing within 48 hours if required.

23. **Mr. Teraya** asked whether the delegation considered the definition of a victim under Albanian law to be broader or narrower than the one contained in article 24 (1) of the Convention. He said it was regrettable that the provisions of article 58 of the Code of Criminal Procedure, relating to the right of victims to receive compensation, appeared not to include the other forms of reparation mentioned in article 24 (5) of the Convention, namely restitution; rehabilitation; satisfaction, including restoration of dignity and reputation; and guarantees of non-repetition. He asked whether that was indeed the case and, if so, when the State party planned to correct that omission.

24. **Ms. Dralo** (Albania) said that any information that the delegation could not provide immediately could be submitted in writing, along with the statistical data already requested, within 48 hours.

25. **Ms. Imeraj** (Albania) said that the amended Code of Criminal Procedure listed the rights of victims and, in a departure from past practice, accorded victims or a member of their family the right to appoint a lawyer of their choosing to assist them during legal proceedings. If a victim lacked the financial resources to retain the services of a lawyer, the competent authorities could appoint one on his or her behalf. She considered that the existing practice, under which any person who had been harmed, injured or killed as a result of a crime, accident or other event or action was regarded as a victim, was in conformity with the definition of "victim" contained in article 24 (1) of the Convention.

26. **Ms. Peçi** (Albania) said that article 58 of the Code of Criminal Procedure, which had been amended in 2017, now included a number of the elements set out in article 24 (5) of the Convention. A comparative analysis of the provisions of article 58 of the Code of Criminal Procedure and article 24 (5) of the Convention could be submitted in writing. State prosecutors had a clear understanding of the meaning of the term "victim" and routinely applied it in their work.

27. Although no cases of enforced disappearance involving children had been recorded to date, the police were seized of a number of cases involving missing children. To facilitate the management of those cases, the police had created a database containing information on missing persons and on violations of the right to life. The delegation would welcome any suggestions and recommendations from the Committee on case management and on protocols for dealing with future cases of enforced disappearance involving children.

28. **Mr. Decaux**, supported by **Mr. Figallo Rivadeneyra**, thanked the delegation for the fruitful dialogue and said that it had proved useful in identifying new ways for the State party and the Committee to work together to achieve the full implementation of the

Convention. The Committee was particularly grateful for the additional information provided throughout the dialogue, including the information submitted overnight.

29. He recalled that the Convention, in addition to providing a general framework for the protection of persons from enforced disappearance, set out preventive measures for the future, tangible guarantees for the present and principles for dealing with the past. For each State party, the decision to ratify the Convention was but the starting point for its implementation. The transposition of the Convention into domestic criminal law was essential for facilitating international cooperation and establishing universal jurisdiction over offences of enforced disappearance.

30. The Committee was pleased to learn that the State party had received a visit from the Working Group on Enforced or Involuntary Disappearances and trusted that it would take the Working Group's conclusions and recommendations into account. The Committee also welcomed the drawing up of a draft agreement between Albania and the International Commission on Missing Persons.

31. Going forward, the State party should strengthen its legal framework for preventing and combating enforced disappearance by adopting measures to, inter alia, investigate offences committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring them to justice; address trafficking in persons, including minors; and hold criminally responsible any superiors who failed to prevent or were complicit in the commission of offences of enforced disappearance. The State party should also publicize the content of article 6 (2), which provided that no order or instruction from any public authority, civilian, military or other, could be invoked to justify such an offence. The Committee's substantive statement of February 2016 on enforced disappearance and military jurisdiction was also relevant in that regard. The State party should likewise consider establishing enforced disappearance as a continuous crime, abolishing the applicable statute of limitations, and should establish a definition of "victim" that was fully in line with the one contained in article 24 of the Convention.

32. The State party should do more to increase the participation of competent national institutions, civil society and NGOs in activities related to the implementation of the Convention and to guarantee the right to form and participate freely in associations for victims and human rights defenders. It should likewise continue its efforts to train civil servants, law enforcement officers, members of the judiciary and military personnel on the issues related to the Convention. The Committee would appreciate receiving the additional information requested within 48 hours so that it could be reflected in the Committee's concluding observations, which should then be disseminated widely in order to raise public awareness of the Convention and the work of the Committee.

33. **Ms. Dralo** (Albania) thanked the Committee for the productive dialogue and said that the delegation would endeavour to submit all the additional information requested within 48 hours. The suggestions and recommendations made by the members of the Committee throughout the interactive dialogue would be of great assistance to the various line ministries and institutions involved in implementing the Convention. As a candidate for accession to the European Union, Albania remained committed to promoting and protecting human rights and would intensify its efforts with a view to meeting all of its international obligations under the Convention.

The meeting rose at 12.15 p.m.